

THOMAS RODNEY
REVOLUTIONARY AND BUILDER OF THE WEST
BY
W. B. HAMILTON

B
R694H

DUKE
UNIVERSITY



WOMAN'S COLLEGE
LIBRARY

THOMAS RODNEY

Revolutionary &

Builder of the West



By

WILLIAM BASKERVILLE
HAMILTON



Digitized by the Internet Archive
in 2021 with funding from
Duke University Libraries

THOMAS RODNEY

Revolutionary and Builder of the West

THOMAS RODNEY

*Revolutionary &
Builder of the West*

by William Baskerville Hamilton

DUKE UNIVERSITY PRESS

1953

COPYRIGHT, 1953, BY THE DUKE UNIVERSITY PRESS
ENGLAND: CAMBRIDGE UNIVERSITY PRESS, LONDON, N. W. 1

Library of Congress Catalog Card Number 53-8265

B

R694H

PRINTED IN THE UNITED STATES OF AMERICA
BY THE SEEMAN PRINTERY, DURHAM, N. C.

This volume is published in memory of
William Kenneth Boyd

PREFACE

[*This little book is a separate printing of the biographical sketch which forms a portion of* ANGLO-AMERICAN LAW ON THE FRONTIER: THOMAS RODNEY AND HIS TERRITORIAL CASES (*Durham: Duke University Press, 1953*).]

This great republic blooms from the dust of some peculiar bosoms; not the least unlikely of them was that of Thomas Rodney. The mysterious ways of Providence selected him to be one of the builders of the Western country at a time when he was a toothless old failure living on romantic and mystic dreams, rescued from the grave by an unusual, and temporary, access to patronage by the Democratic-Republican party in Delaware.

With his brother Caesar and a few other leaders, his dabblings in Kent County politics made him a coauthor of the Revolution in Delaware. A fortunate result of his politics, which were for the most part ill conceived and disastrous, was that Delaware had a pro-Revolutionary government for the few resounding months in which the proud goal of independence was accepted. The story exemplifies the role of personalities, of little accidents and incidents, of an organized and purposeful minority, and of force, in shaping great historical events.

Rodney even went so far as to serve in the war—for almost thirty days. Looked at closely, Washington's victory seems miraculous. Rodney had the proud privilege of marching through New Jersey in the van of the army, and made his contribution to the battle of Princeton.

But 1776-1777 was almost his only successful year. A failure at business without the sustaining arm of his able brother, Rodney declined in fortune and esteem. After a stint in debtor's prison, he withdrew from life itself. He wrote his diary and letters to the editor. He read. He pondered over past glories and the iniquities of his enemies. He saw visions. He began to convince himself that God had sent a messenger to him in 1776 to send him to save the Revo-

PREFACE

lution by stopping Washington's retreat and inspiring the counter-attack across the Delaware. Many such delusions sustained him as he sat idly staring out his bedroom window on Dover Square.

Regarded as a suitable recipient for patronage, this old derelict—but a Rodney, withal—was sent off by Jefferson to the far Southwest, as a land commissioner and a judge in the Mississippi Territory. Given something to do, inspired by responsibility and sustained by a sense of mission in civilizing, guarding, and extending the frontier of the United States, old Rodney displayed a new personality. Gone were the visions, the paranoia, the nostalgia, replaced by energy and patent ability. In the delicate work of settling conflicting land claims under grants from five governments and in the important task of building the common law into an institution of Western society, he served his country well. He so conducted himself in these arduous duties that he won the respect and affection of the men he served, and died full of honor, a worthy vehicle of Anglo-American civilization.

I must acknowledge substantial aid from Dr. Clarence E. Carter, editor of the *Territorial Papers of the United States*, and from the Research Council of Duke University. Contributions of essential material were made by Dr. William D. McCain, director of the Mississippi State Department of Archives and History; Miss Courtenay Clingan of the Central High School, Jackson, Mississippi; Mrs. Edith Wyatt Moore of Natchez; Dr. John K. Bettersworth of Mississippi State College; Dean Charles S. Sydnor of Duke University; and Miss Gertrude Brincklé and Miss Ruthanna Hindes of the Historical Society of Delaware. Dr. John A. Munroe, professor of history in the University of Delaware, kindly read the MS and attempted to save me from the more egregious errors.

W. B. H.

Duke University

CONTENTS

Preface	vii
I. Revolutionary Agitator, 1744-1776	3
II. Revolutionary Soldier, Merchant, and Congressman, 1776-1783	24
III. Decaying Officeholder and Philosopher, 1783-1802	42
IV. Pioneer, Land Commissioner, and Judge in the Southwest Borderlands, 1803-1811	61
Index	91

THOMAS RODNEY

Revolutionary and Builder of the West

THOMAS RODNEY

I. *Revolutionary Agitator, 1744-1776*

THOMAS RODNEY was conscious of the fact that a certain man whom he visited at the end of the eighteenth century viewed him as a failure. His own estimate of his accomplishments was somewhat different: "He did not know that Julius, The heir & Representative of the Caesars, The Primomobile of Independence, The leader of Armies, The Messenger of the most high The Savior of America, The Father of the Cincinnati, and the Legislator of the United States appeared before him."¹ A rather calmer contemporary view has been transmitted at some distance: "I have been informed by an eminent gentleman, far advanced in life, formerly resident in Dover, Delaware, that in his youth he well knew Thomas Rodney,—a gray-headed man,—much respected,—reputed a man of extensive reading, and having a good knowledge of law, though not a lawyer by profession,

¹ Entry of Dec. 15, 1799, in Journal of Accounts, 1774-1799, Div. of MSS, Library of Congress.

The line of Thomas Rodney ran out in 1918, and the papers of Caesar, of Thomas, and of Caesar Augustus were sold in 1919 through Stan V. Henkels of Philadelphia. His catalogue No. 1236: *The Great Historical Sale. The Papers of Caesar . . . Thomas . . . Caesar A. Rodney . . . June 13th, 1919*, and Part II, No. 1238: *Important Historical and Literary Sale . . . June 26, 1919*, describe some of the treasures. The copies of these catalogues in the New York Public Library are embellished with some notations of purchasers and prices. Through this sale, the manuscript remains of Thomas Rodney were widely scattered. The author, needless to say, has not seen all of them. He has used those in the Historical Society of Delaware (which has by far the largest and best collection), the Library of Congress, the Historical Society of Pennsylvania, Brown University Library, and the New York Public Library. The Genealogical Society of Pennsylvania and the Delaware Public Archives Commission, among other public depositories, own some of the papers, and many are in private hands. Thomas Rodney manuscripts still appear on the market.

The author has not tried, except for occasional reason, to name and describe each document as he cited it. Thomas's journal or diary, for example, was written in bound books, in parts of bound account books, and on scraps of paper. It would be impossible to describe and identify each snatch of journal.

Also, the writer has not often distinguished between autograph letters sent and drafts. The brutal fact is that it was of no importance whether Rodney's letters were received or not, so that such distinction would serve no purpose.

ANGLO-AMERICAN LAW ON THE FRONTIER

—a writer of essays for newspapers, and somewhat eccentric in his opinions. . . .”²

Now in the face of such contradictory appraisals of Rodney it is difficult for the writer to refrain from expressing his own views. Yet he is adjured by Rodney to efface himself. “It appears to me,” Rodney once said,

that History Should be wrote in a plain narative without Affecting Any other Stile or language than what the Subject naturally presents, with attention, on a review, to make it Gramatically pure & Correct—The Custom too of interrupting the thred of the Story with the historians Observations appear To Me Officiously intruding & unbecoming—If the historian wishes To make any observations or explanatory Coment they ought to be disposed of in distinct notes at the bottom of the page or at the End of the book or Volum.³

How can one write a plain narrative of a man who was visited by archangels and by Julius Caesar and who was divinely inspired to be responsible for the declaration and the winning of the independence of his country?

Thomas Rodney’s life falls into three divisions. In the first, ending 1788-1791, he sailed along in the wake of his distinguished brother, Caesar. Thomas took an active part in Delaware politics as a Whig; he held a variety of offices; and he failed in the mercantile business at least twice. In this period too he was a passionate patriot in a state that contained a large number of active Tories;⁴ served in the Revolution; and became a member of several of the Continental Congresses. By 1791 all was gone. His brother was dead and his estate foreclosed. Thomas was in jail for debt. His offices were lost, and his enemies triumphant in high places. Neglected, poor, and grown old, all Rodney could do was look back to glory. In the decade of the nineties, in compensation, he formed his too glorious ideas of the

² William Thompson Read, *Life and Correspondence of George Read, A Signer of the Declaration of Independence. With Notices of Some of his Contemporaries* (Philadelphia, 1870), p. 230.

³ Entry of Jan. 8, 1797, Rodney’s Journal, Hist. Soc. of Penna.

⁴ No effort has been made by the writer to use the terms *Whig*, *patriot*, *Tory*, *radical*, or *conservative* with any precision whatever. *Whig* and *patriot* and *radical* are used as synonyms. They denote persons who are thought to have proceeded beyond bare protest against England’s actions to positive advocacy or support of independence. *Tory* and *conservative* are used as synonyms. They are applied to persons who opposed all anti-British moves, or who began as protestants but balked at independence, or who either actively rebelled against actions of the independence faction or were merely unenthusiastic enough to be smeared by the Whigs with the label *Tory*. *Loyalist* is a person who actually fled to the British and professed his loyalty.

THOMAS RODNEY

services he had done his country. His contemporaries and Delaware historians became fixed in an estimate of Rodney that is rather too low. But his career was not over. The third phase of his life began with the rise to power of the Democratic-Republicans in Delaware. He returned to office in that state and in 1803 set out for the West, where his most useful, and probably his happiest, years lay ahead of him.

Rodney was born in St. Jones' Neck, June 4, 1744, old style; he later celebrated his birthday on the fifteenth. Thomas was of the third generation of Americans; his grandfather William Rodeney [*sic*] migrated about 1681 from England. Thomas's parents were Caesar and Elizabeth Crawford Rodney, daughter of an Episcopal clergyman. Of their eight children, Thomas was the youngest. The father died in 1745, when Thomas was eleven months old, and his mother married Thomas Wilson. In their household, without formal education, Rodney lived until he was eighteen, when he moved to Lebanon Farm to live with his brother Caesar. For the rest of Caesar's life, Thomas earned his living by taking care of Caesar's farms and business enterprises, and by sometimes doing the work of Caesar's clerical offices. The relation between the brothers was close and affectionate; the elder supplied money, home, and preferment for "Tommy."

Caesar Rodney (1728-1784) held almost every office in the gift of the proprietor or the people of the Lower Counties. He was high sheriff of Kent County, 1755-1758; register of wills, 1763-1778; recorder of deeds, 1766-1775; clerk of the Orphans' Court, 1767-1774; and trustee of the Kent County Loan Office from 1769. He was a member of almost every Colonial House of Assembly from 1758, and four times speaker. In 1778 he was elected by the assembly to a three-year term as president of the Delaware State.

Caesar early took the leadership of the Lower Counties' protest against the British policy which followed the Seven Years' War. He was a member of the Stamp Act Congress in 1765, and repeatedly a delegate to the Continental Congresses. He was a member of the Committee of Correspondence of the Colony, 1773, and of Kent County, 1774; of the Councils of Safety, 1775 and 1776, under whom he was appointed a brigadier general of the militia. He crowned his career as a radical patriot and immortalized himself in Delaware primers by arriving in Philadelphia at the last minute on July 2, 1776, to throw Delaware behind R. H. Lee's resolution for independence. He later signed the Declaration of Independence. These and other

ANGLO-AMERICAN LAW ON THE FRONTIER

public duties Caesar pursued through attacks of asthma, and, for at least fifteen years, the pain of cancer in the corner of one of his eyes.⁵

With Caesar, Thomas moved to Dover in 1764 and began to take his station as a young man about town and one of the ruling gentry. He frequently sought the ministrations of his barber, killed time about the taverns, and courted the girls. Infrequent visits to Philadelphia opened the pleasures of the metropolis to him. If he had any paid employment, it was an occasional job as a surveyor and a "viewer" in land litigation. At the last court before November 24, 1769, he "sot up" for high sheriff, at the solicitation of the Court party, and began electioneering in taverns, at a husking at Jonathan Brady's, and at a wedding.⁶ In a later note Rodney says he was successful in his race, but "James Coldwell, who was my coleague, by my consent, was made the Sherrif."⁷ According to his own account he was in 1766 or 1768 "appointed one of his Majestys Justices,"⁸ but no official record has been found of such appointment earlier than 1770. He was certainly a justice of the peace and a member of the Court of Common Pleas and Orphans' Court for Kent early in 1770. In March of that year he persuaded his colleague James Bowyer to decide a case with him, against Chief Justice Charles Ridgely, on the dubious grounds that law is founded on reason.⁹ He probably sat as a 'squire

⁵ For the Rodney family and Rodney's early years, see a history of the Rodney family which Thomas copied out in 1769 (*Journal of Thomas Rodney, 1769*, in *Hist. Soc. of Del.*) from a MS by Sir Edward Rodney, and to which he added, certainly as late as 1774. This bulky MS is in the *Hist. Soc. of Del.* There is a genealogical note at pp. 445-447 of George Herbert Ryden (ed.), *Letters to and from Caesar Rodney, 1756-1784* . . . (Philadelphia, 1933). A biographical sketch of Caesar Rodney, by Ryden, appears at pp. 3-17 of the same work. The sketches in the *Dictionary of American Biography*, XVI, 81-84, of Caesar and Thomas and Caesar A. are also by Ryden.

⁶ Rodney's Journal, 1769, in *Hist. Soc. of Del.*; John A. Munroe, "The Philadelawareans: A Study in the Relations between Philadelphia and Delaware in the Late Eighteenth Century," *Pennsylvania Magazine of History and Biography*, LXIX (1945), 128.

⁷ A chronology in "Commonplace Book 1773" in *Hist. Soc. of Del.* Statement to same effect in his autobiography, aged twenty-eight, in the Rodney genealogy referred to in n. 5 above. Two nominees for sheriff were elected, of whom the governor appointed one.

⁸ The first date in "Commonplace Book 1773" written in the 1790's; the second in Rodney genealogy, probably written in 1772. See n. 7 above.

⁹ "Thomas Rodney's Book. Sundry Extracts from the Common and Statute Law. 1770." In *Hist. Soc. of Del.* Among other notes in this MS are those of an Orphans Court, Mar. 23, 1771, in which Rodney was one of six justices present, and rather full notes, including lawyers' citations, of cases in a Common Pleas at Dover, May Term, 1771.

THOMAS RODNEY

until he married Elizabeth Fisher on April 8, 1771,¹⁰ and decided he must earn a living.

Probably with Caesar's backing, he opened a store in Philadelphia in September. This venture lasted not quite two years, at the end of which he returned to Dover with a baby boy, Caesar Augustus, and a pregnant wife, to try his luck with a store there.¹¹ The evidence does not indicate that Thomas was a prosperous merchant. But there was more for a Rodney to live on in the 1770's than the peddling of sundries to the general. There was the bread of office and the wine of politics—nay, of revolution.

In 1774 he returned to the county bench,¹² a position not without prestige and fees. He also resumed his caretaking of Caesar's affairs, and he plunged into Kent County politics. By 1774 the oncoming storm of revolution was agitating political alignments in Delaware, but at bottom the political dynamics were neither ideological nor grand. The most important factor, says Mr. John A. Munroe, who is the authority on early Delaware politics, was "the desire for the power, prestige, and profits of office, a motivation more potent than larger national issues." To this must be added the struggle of the outs against the ins, the dominance of natural leaders or manipulators, personal feuds or loyalties, and family connections and rivalries.¹³ Rodney would have added, further, church affiliations. Until these factors are thoroughly explored and exploited, knowledge of what happened in Delaware in the eighteenth century must be rather limited, and we

¹⁰ Entry of April 12, 1797, Rodney's Journal, Hist. Soc. of Penna.

¹¹ An account book in Hist. Soc. of Del. shows the first entry for the Philadelphia store on Sept. 10, 1771, and the last on July 12, 1773. The first entry of receipts headed "Dover Store" is dated July 17. The writer has not audited these books, but he suspects failure. Caesar A. Rodney was born Jan. 4, 1772, says a note in Rodney's hand in the Rodney genealogy. A note added much later by him says that he had a second son, Petolama (Ptolemy?) Philadelphia, on Oct. 12, 1774, "begot in Philadelphia and born at Dover, but died eight days old." The year obviously should be 1773, to fit the date of the family's moving and that of the birth of a daughter, Lavinia, Jan. 16, 1775.

¹² Delaware, Public Archives Commission, *Governor's Register. State of Delaware. Vol. 1. Appointments and Other Transactions by Executives of the State from 1694 to 1851* (Wilmington, 1926), p. 23. In Div. of MSS, Library of Congress, is Rodney's Journal of Accounts, 1774-1799, which includes receipts of legal fees, Nov. 12, 1774-Oct. 22, 1776; and there is also a judgment docket with entries running from Nov., 1774, to Nov., 1776. These documents date Rodney's second term as a J. P. As a justice he also attended a court of sessions called a "levy court" on Nov. 21, 1775, and on Dec. 19 a "Court of Appeal for Laying the Levis" (Kent County, Levy Court Proceedings, 1775-1783, MS in Delaware Archives, Dover). The levy court was the tax-fixing and governing board of the county.

¹³ John A. Munroe, in H. Clay Reed (ed.), *Delaware, A History of the First State* (3 vols.; New York, 1947), I, 125-126.

ANGLO-AMERICAN LAW ON THE FRONTIER

must use the terms "right" and "left," "radical" and "conservative," to cloak our ignorance.

Utility was given to these terms by the mingling of the Revolution with Delaware politics. That great crisis also made the stakes of politics higher and the risks greater everywhere, but particularly in Delaware. It seems likely that a majority of the inhabitants of the three counties, especially Kent and Sussex, did not put their money on the side of independence; the Revolution was a civil war. But the ability and organization of some patriots, the drift of events, and the leadership of some other colonies led the government of Delaware, and many lukewarm patriots with it, down the road of independence and war. The fact that the course favored by the radical patriots was taken eventually does not mean that the radicals were permitted to steer it. Quite reluctant "Tories" frequently found themselves able to win the offices, but under compulsion to use their offices to pursue the independence and prosecute the war of the radicals. It is not a simple story and the writer is not so foolish as to think he can tell it. But he must try to follow our hero through the maze.

Whoever made the Revolution in Delaware knew how to manage a people; they did not leave the conduct of matters to an unmanipulated public opinion. The popular indignation over the Stamp Act, for example, found expression in the separate but unanimous nomination by assembly members in the three counties, of Caesar Rodney, Thomas McKean, and Jacob Kollock as delegates to the Congress in New York. The nominating letters were strongly similar.¹⁴

In 1769-1770 an embargo agreement was pressed on the merchants along the Delaware by George Read, after which Delaware was relatively quiet until the East India Company was given special privileges in 1773. Under the prodding of Virginia and Massachusetts the Assembly of the Lower Counties appointed (October 23) a Committee of Correspondence. Its membership was a cross section of future Delaware attitudes: Caesar Rodney and Thomas McKean were to follow the patriot line without deviation. Read would refuse to vote for independence. John McKinly would become first president of an independent Delaware but nonetheless be classed by some as a Tory sympathizer, while Thomas Robinson would become an out-and-out Loyalist exile.

The arrival of the news of the Boston Port Bill in 1774 led to "spontaneous" mass meetings in each county, again concerted by some

¹⁴ *Ibid.*, I, 97.

THOMAS RODNEY

able leadership. The resolutions were again identical. A Committee of Correspondence was elected by the people in each county.¹⁵ In Kent the committee consisted of the two Rodneys, Richard Bassett, James Sykes, Dr. Charles Ridgely, William Killen, John Haslet, John Clarke, Jacob Stout, James Wells, and three others. On July 20 this committee passed some fiery resolves protesting the actions of the imperial government. It wrote to Caesar, who was speaker of the assembly, asking him to call what amounted to a convention parliament to elect delegates to the first Continental Congress. (This plan had already been decided upon and Caesar was courteously awaiting this action; he, Read, and McKean were elected.) The committee opened books for subscriptions for the Boston poor; Thomas put himself down for £25. He must have been prominent in the committee, probably its secretary, for he signed its letters of July 21 to the committees of New Castle and Sussex.¹⁶

Local political groups inevitably began to be affected by the imperial issues. Their candidates were agreed upon and put forward by small caucuses or little groups of friends and relatives, who would announce a "ticket." The alignments of factions and kin took the names of Court and Country, names that were probably meaningless, except that the Court party was more pro-proprietor, the Country party making capital out of opposition to the proprietary governor.¹⁷ In September of 1774 the Court party in Kent County was headed by Dr. Charles Ridgely, Caesar Rodney's foster brother. Caesar was his close associate and led his ticket for members of the assembly from the county. This ticket of six names included at least three persons (Ridgely, Jacob Stout, and John Clarke) who were to oppose independence or to become suspect by the patriots in some way. The Country party's ticket, on the other hand, was headed by William Killen, a leader of the Presbyterian element and therefore a radical in imperial politics, and by John Haslet, who was to be a staunch ally of the Rodneys in the movement for independence.

After Caesar left for the Philadelphia Congress, Thomas claimed

¹⁵ *Ibid.*, I, 102-104.

¹⁶ The minutes of the committee, 1774-1775, are in the Hist. Soc. of Del. They are not in Rodney's hand but were doubtless preserved by him, and are concluded with a note in his handwriting, probably added much later. See also Ryden, *Letters . . . Caesar Rodney*, pp. 38-45. This work, incidentally, follows the abominable practice of omitting the personal portion of the letters printed.

¹⁷ This is a long-shot guess from Caesar's reporting favorably on both the governor and Richard Penn in Sept., 1774, "by this you may See that some people with you [the radicals with whom Thomas was now associating?] are mistaken in their Politics . . ." Caesar to Thomas, Philadelphia, Sept. 24, 1774. *Ibid.*, p. 52.

ANGLO-AMERICAN LAW ON THE FRONTIER

that the Church, or British, group had tried to throw Caesar off the ticket. Furthermore, Thomas and some of the hotheads became dissatisfied with Ridgely's attitude on public matters—presumably relations with Great Britain—and provoked a quarrel that was to lead to a realignment of parties in Kent along Whig and Tory lines. This could not be done absolutely; there were local crosscurrents to prevent a simple black and white alignment. Caesar Rodney seems to have opposed such a division anyway. He was coolheaded and placatory. He had to live with his fellows and Kent was not a radical county. He never quarreled with those who took a different, to say nothing of a more moderate, view of what was necessary in the dispute with England. Not so Thomas, if left to his own devices. Accordingly he formed a coalition with members of the Country party and introduced a third ticket into the campaign which left out Ridgely, Stout, and Clarke, but included Thomas Collins, Caesar, and John Cook (for sheriff) from Ridgely's ticket. From the Country party Thomas's middle ticket included Killen and Haslet. Ridgely was assured that none of this was done with the connivance of Caesar. The latter was left on the Court ticket; one Robert Holliday was put on in place of a man who had originally been on all three; and this ticket carried the election. Thomas's radical group was defeated, although two members of it had been elected the year before.¹⁸

But the shot that was heard around the world, fired in the Massachusetts countryside in the following spring, was heard also in Delaware. It produced an atmosphere in which Rodney breathed more successfully. The citizenry organized themselves into armed bands and various vigilante committees. They could thus offer resistance to England; and especially could they threaten each other. For the next two years conditions in Kent and Sussex counties could be described as riotous, if not as a civil war. Already before Lexington, men of New Castle and Kent had petitioned the assembly to form a militia.¹⁹ The militia in Kent, however, was not organized until after the news from the North. In May, Thomas Rodney said, the people of Dover assembled at the courthouse and unanimously appointed him captain. "I drew up the military rules, which being adopted later by all the county, made the first militia of the revolu-

¹⁸ This story is told by H. Clay Reed, "Kent County Politics," *Delaware Notes* (6th ser.; Newark, Del., 1930), pp. 37-40. The letters from which he wrote were later printed in Ryden, *Letters . . . Caesar Rodney*, pp. 46-54.

¹⁹ Mar. 14, 1775. Peter Force, *American Archives: Fourth Series . . . Volume II*, (Washington, 1839), cc. 127-128.

THOMAS RODNEY

tion."²⁰ On May 24 the twenty companies of the Kent militia met, organized themselves into an association "to defend the liberties and privileges of America," and elected Caesar Rodney and John Haslet colonels.

This meeting was held at the behest of the county Committee of Inspection, which controlled the militia at this time. The chronology and the interrelationships of the various types of committee in Delaware are rather obscure. We have seen the erection of committees of correspondence in the year 1774. They seem to have become subordinated to committees of inspection and observation, which may have been formed before the opening of 1775,²¹ and which were probably elected by the people. The Kent committee ordered the election, by the voters, of a new committee on August 14, 1775. A large number, including both the Rodneys, were chosen. The temper of the members, who elected Caesar chairman, can be judged by the constituency of the Committee of Correspondence which they chose on August 17: Thomas Rodney, chairman; James Tilton; William Killen; John Baning; and one of the Vincent Loockermans,²² father or son. All five were radicals.

A general Council of Safety for the three counties seems to have come into existence early in September; it is not evident how it was chosen. Part of its minutes, September 11, 1775-January 13, 1776, are extant, thanks to their having been preserved in Thomas Rodney's papers. The Council of Safety was made up of three branches, one for each county. It does not appear whether or not Thomas was a member of the first council, but he was elected by the assembly to a new council on October 20 and took his seat when it met at New Castle on January 8, 1776. He was one of seven members for Kent.²³ This council took over the regulation of the militia from the Com-

²⁰ Autobiographical fragment, probably for a newspaper, in Hist. Soc. of Del.

²¹ The Committee of Inspection of Kent was acting on a case of importation of tea on Jan. 26, 1775, according to a document in Hezekiah Niles, *Principles and Acts of the Revolution in America* . . . (Centennial ed.; New York, Chicago, and New Orleans, 1876), p. 239.

²² Extract from the proceedings in Force, *American Archives: Fourth Ser.*, III, c. 131. John Thomas Scharf, *History of Delaware, 1609-1888* (2 vols.; Philadelphia, 1888), I, 224 has been trusted for the month and year.

²³ The minutes are now in the Delaware Archives, and have been printed in Leon de Valinger, Jr. (ed.), *Delaware History*, I (1946), 55-78. The entry of July 1, 1796, in Thomas's journal, found in "Proceedings in Congress, 1781 &c.," in Div. of MSS, Library of Congress, contains the information that "Simon W. Wilson brot. the Minutes of the Council of Safety for 1775 & 1776. out of the Office and delivered them To me Today to be preserved. . . ."

ANGLO-AMERICAN LAW ON THE FRONTIER

mittees of Inspection and it raised the Continental troops. To the Committees of Inspection were left "civil matters."²⁴

By "civil matters" is meant Tory-baiting and the harrying of political heretics and nonconformists, or such portions of these pleasures as were not enjoyed by the mobs or militia companies. The stocks, tar and feathers, and the torch were abroad in the land. Thomas in later years claimed that he had attempted to restrain the use of force and persecution in 1775 and 1776 and to save some of the victims—Ridgely, John Cowgill, John Clarke, Thomas Robinson, Richard Smith, and one of the Chews; and that his efforts had brought him hard words from such violent patriots as Killen and Parson John Miller²⁵ (a New England Calvinist). This may have been so, but it also seems that wherever there was anti-Tory action in Kent, Rodney or his Dover Light Infantry Company was in the van.

He was apparently not involved directly in the examination by the Committee of Inspection of Robert Holliday, a Quaker and a member of the assembly from Kent, who wrote to a Philadelphia paper that Kent was loyal to King George; but Richard Smith, summoned to appear, sent twice for Rodney's counsel, upon which he sent the committee an apology.²⁶ However, Thomas signed a summons for the Committee of Correspondence to the Reverend Sydenham Thorn, September 7. This Anglican parson had held in contempt the day (July 20) set for prayer by the Continental Congress and he was to appear at the Sign of the Golden Fleece in Dover to answer the premises.²⁷

The patriots likewise set in on Dr. Charles Ridgely, the leader of the old Court party and a member of the assembly. Ridgely was accused of giving expression to defeatism and of criticism of the Congress; but Thomas attributed the popular clamor against Ridgely to the annoyance of the people at this suspected Tory's "gitting in the council [of Safety]." Rodney's later account was that he secured the doctor's acquittal and prevented his being tarred and feathered.²⁸

²⁴ Note by Rodney in above entry (n. 23).

²⁵ Note in Rodney's hand on the minutes of the Kent County Committee of Correspondence; draft, Rodney, May 15, 1793, to the chief justice of Pennsylvania (McKean), both in Hist. Soc. of Del.; and many other documents. This was one of Thomas's fixed ideas.

²⁶ May, 1775. Force, *American Archives: Fourth Ser.*, II, cc. 466-467; Harold Bell Hancock, *The Delaware Loyalists* (Wilmington, 1940), p. 7; Thomas to Caesar, May 10, 1775, in Ryden, *Letters . . . Caesar Rodney*, p. 58.

²⁷ Summons in Hist. Soc. of Del.; minutes of the Committee of Correspondence, Sept. 7, 1774; Hancock, *Delaware Loyalists*, pp. 7, 46-47.

²⁸ Sept. 12, 1776. Minutes of the Committee of Correspondence, especially Rod-

THOMAS RODNEY

In this atmosphere the elections for assemblymen and sheriff came on, set for October 2. The August elections for the Committee of Inspection had seemed to indicate that the tide favored the radicals. Ridgely and Holliday had been smeared by the Tory-hunters. Their colleague, Jacob Stout, was perhaps not sound. Three years later he was to be published as a companion of a deserter and so not dare to take his seat in the house.²⁹ John Clarke was to get into serious trouble with the hotheads. It is not at all clear whether the radicals took the opportunity to set up a clear opposition, and beat the Tories in an open fight, or whether the political powers that were in the county discreetly swam with the tide for the time being, and thus failed to make a plain issue of the elections. "... Doctr. Ridgely . . . was acquitted by the Committee," Thomas wrote Caesar,³⁰ "—he, Stout & Holladay has declined & Collins proposed to join the Ticket & they agreed upon five men—Your self, Collins, Hazlet, Killen, Baning, & Doctr. Tilton, or Cook or Clark mentioned for the 6th but neither could be fully fixt on—And for the means of qui[e]ting (much against my own Interests and inclynation) I was prevail[le]d on to be mention as the sixth man. . . ." The antecedent of "they," a significant question, is hard to determine. It could be the Committee of Inspection; it could be Ridgely and his group; or persons unknown.

However, it is clear from a letter written by Caesar to Thomas on September 27³¹ that Thomas was the leading spirit in an alignment that Caesar called "your Party," and that Thomas was proceeding in what seemed to Caesar a partisan and imprudent manner that would make trouble. In the first place Thomas's party had thrown off their ticket Philip Barrett, a man who had been running for sheriff for a long time and was in line for the office. He was an honest man, had a large family, and had "applied a large part of his property to the obtaining the office of Sheriff." In such circumstances, party ought to give way to common justice. But worse than this personal injustice was the political bungling involved. Apparently Barrett, John Cook (the high sheriff of Kent for some years),

ney's notes; Reed, *Delaware Notes* (6th ser.), p. 39. Thomas to Caesar, Sept. 17, 1775 (Ryden, *Letters . . . Caesar Rodney*, p. 64), makes no claims to having saved Ridgely. The minutes of the Council of Safety explain the absence of member Ridgely on Sept. 12, by saying that he had "business to transact with the Committee of Inspection now sitting. . . ." *Delaware History*, I (1946), 57.

²⁹ Hancock, *Delaware Loyalists*, p. 32.

³⁰ Sept. 17, 1775. Ryden, *Letters . . . Caesar Rodney*, p. 64.

³¹ From Philadelphia. *Ibid.*, pp. 64-65.

ANGLO-AMERICAN LAW ON THE FRONTIER

and Lieutenant Colonel Thomas Collins, who was Cook's brother-in-law³² and who would become president of Delaware, 1786-1789—apparently these three were united at the head of a group of some political power. They were the center of the interests in the old Court party that were favorable to Caesar Rodney, and in 1774 had prevented Ridgely's and the Church of England faction's dropping Caesar from the ticket.³³ For this reason, and because he wanted as much unity and harmony as possible for the troublous times ahead, Caesar was horrified to hear that Cook, Collins, Barrett & Co. had not been present at and had not assented to the making of Thomas's ticket.

Caesar was too late: the mischief was done. Collins was not on the ticket when it was elected; the timid Whig Vincent Loockerman had been substituted for him. In the next year Collins was found among the triumphant conservatives.

Apparently Thomas had aided in breaking up the old political alignments and forcing a sharper division shaped by the policies of the Revolution. He had joined the old Country party, whose leaders were counted among the advocates of extreme measures against England; and his politics, together with Caesar's own inclinations in the fight with the imperial government, drew Caesar along with him in association with the radicals. All speculation aside, the delegation elected from Kent in October of 1775 was all patriot: the Rodneys, Haslet, Killen, Baning, and Loockerman. They went far to make the assembly Whig in the critical year of the Revolution, politically speaking. The die would be cast, talk of reconciliation abandoned, and independence declared.³⁴

The year 1776 was for Thomas Rodney one of violence and glory. In after years, in the midst of poverty and neglect, its events became the chief source of his self-justification, and he fed on them in his heart. By the opening of the year he seems to have become chairman of the Kent County Committee of Inspection and Observation. He signed the formal condemnation by the committee of John Cowgill, January 4, 1776.³⁵ It will be remembered that he later claimed

³² John Munroe in Reed, *Delaware*, I, 118.

³³ If the writer reads the initials aright in Thomas to Caesar, Sept. 11, 1774, Ryden, *Letters . . . Caesar Rodney*, p. 46, the effort was prevented "by your warm friends in their council, viz C—K. C—ls & P—B. together with the popular warmth for you out of doors. . . ."

³⁴ Reed, *Delaware Notes* (6th ser.), p. 40. Reed is not responsible for the speculations of the writer.

³⁵ Force, *American Archives: Fourth Ser.*, IV, c. 564.

THOMAS RODNEY

to have protested the violence accorded this man. Cowgill was a Quaker of Duck Creek who refused on religious grounds to accept Continental currency: "millers refused to grind his corn, and the schoolmaster sent his children home."³⁶

Rodney was captain of the Dover Light Infantry Company,³⁷ an organization more given to troublemaking and politics than to martial rigors. In March of 1776, Thomas Robinson, the greatest Loyalist in Sussex, the most Tory of counties, was passing through Dover on his way to sit in the assembly, accompanied by his colleague in the legislature, Colonel Jacob Moore. The Light Infantry seized upon them and threw them in jail, after being forbidden by Rodney to do so. The Kent County delegation (Whig) to the assembly, including Captain Thomas, petitioned the militia to release them, so that legislative business could be done. They were turned loose, on condition that the assembly investigate their fitness for a seat. Instead, according to Tilton, George Read had the Light Infantry summoned to attend the house (in New Castle) for breach of privilege. The officers, it must be said, "specifically exempted Thomas Rodney from ordering their seizure."³⁸

Early in May Rodney paraded his company at a muster with what seemed to him considerable *éclat*, and a day or two later was alerted by the passage up the Delaware of English men-of-war. This zeal contrasted with the faultfinding and machinations of Quakers and politicians who "would Even Sacrifice the Most Virtuous Cause any Body of men ever were Engaged in, to gratifie themselves with a seat in the House. . . ."³⁹ The day of decision had arrived, and the Rodneys were ready for it. They had traveled through the marshes and fogs of aimless resistance and vague conciliation to the purposeful and firm, if dangerous, ground of independence. "I Trust that

³⁶ Hancock, *Delaware Loyalists*, p. 8.

³⁷ The writer cannot say whether it was this specific captaincy to which Rodney was elected by the people in May of 1775, or whether the Light Infantry appeared in subsequent organizations of the militia. His commission as captain, Sept. 12, 1775, signed by John McKinly (as chairman of the Committee of Safety) is in the Hist. Soc. of Del. He seems to have been recommissioned under the new council, Jan. 28, 1776. (A typed list in same depository).

³⁸ Hancock, *Delaware Loyalists*, p. 9; Niles, *Principles and Acts of the Revolution* (1876 ed.), pp. 243-244, where there is a quotation from *The Biographical History of Dionysius, Tyrant of Delaware*. . . . By Timoleon (Philadelphia, 1788). Dionysius, the villain of this piece, was George Read. Timoleon is thought to have been Dr. James Tilton, a warm Whig. Rodney's account is in "Notes on Timoleons Biographical History of Dionysius," in Brown Univ.

³⁹ Thomas to Caesar, May 5; John Haslet to Caesar, May 7; Caesar to Thomas, May 8, 1776. Ryden, *Letters . . . Caesar Rodney*, pp. 74-75.

ANGLO-AMERICAN LAW ON THE FRONTIER

this Subject will not be disputed much longer," Thomas wrote his brother on May 12. "The worst of Tories must now Confess the black design of Administration—And that Independence is the only Guardian of freedom in America."⁴⁰ Thomas claimed that as early as 1773, when Charles Lee passed through Dover, he had told Lee that if England persisted in her course, America must declare independence. But this claim was made in 1800.⁴¹

A thorough comprehension of the motives of the Rodneys—especially Caesar, who was of a conservative bent and conciliatory nature—in advocating independence would be interesting, but we do not know what went on in the brothers' minds. Neither of them even attempted any elaborate philosophical rationalization, at the time or afterwards; the steps they took were not animated by theory. In later years, indeed, Thomas was to conjure up a "golden age" of happiness before 1763. That was the age of his youth. Nor did either of the Rodneys stand to profit economically by the attainment of independence. The only profit to them would have been the justification derived from the success of measures and of a political faction to which they increasingly became committed. Perhaps the truth lies on the surface: like many more conservative colonists, they did not relish the taxes and taxing power of a government across the sea. They were repelled by the trial of Americans at a distance from their neighbors, and by the use of force by the English. Thomas's head was hot, and Caesar, much cooler, was thrown by his prominence into the Congresses at which the colonists tried to concert measures. He invariably tried to carry out the proposals of these Congresses and to secure their adoption in Delaware. Thus he approached the precipitous decline of 1776 by what seemed to him inevitable steps and was not averse to rushing down the slope, pushed a little by Congress, and by the political situation in Kent County, where he found himself rejected by the moderates and aligned, against his will, with a more radical group.

Whatever the motivation, the Rodneys were leaders in bringing on the Revolution in Delaware. There is considerable truth to Thomas's later statements that the Revolution was made in that state by a handful of men and the Presbyterians. This was especially true in Kent and Sussex, where the Rodneys, Haslet, John Dagworthy, John Jones and a few others dragged along a hostile majority. New Castle County, from the presence of more merchants and more

⁴⁰ *Ibid.*, p. 77.

⁴¹ Rodney's Journal, July 18, 1800, in Hist. Soc. of Del.

THOMAS RODNEY

Scotch-Irish, was more radical and easier to handle. The entire Anglican communion and the Quaker societies were thought to be Tory and the small but growing, emotional sect of the Methodists was suspect.⁴²

Between May 10 and 15, 1776, the Continental Congress abruptly precipitated decision in lower Delaware by recommending that those colonies which had not already done so should form governments to better order their affairs and to remove the absurdities of swearing allegiance to and deriving authority from the Crown. Caesar did not quite face up to the implications of this document. "Many of those here who are *termed the Cool Considerate men think* it amounts to a declaration of Independence. It certainly savours of it, but you will see and Judge for Your Self . . .," he wrote Thomas.⁴³ But his practical mind immediately grasped its significance in Delaware politics. He wrote to Haslet in Kent, presenting a good argument, on the practical side, for the recommendation of Congress.

The question was how to get it adopted. Caesar suggested that Haslet, Tommy, Killen, and young Dr. James Tilton meet secretly, before the matter appeared in the papers, to concert their means of giving effect to the resolution; and to prepare propaganda and petitions. The members of the assembly should not appear too openly in the business.⁴⁴ Caesar heartily disapproved of the mode chosen in Pennsylvania—a convention—which would offer the opportunity to raise opposition and would cause delay. Furthermore, he knew that in Kent a fresh election would go against his party, so fortuitously settled in the assembly by the last election, and that in "the other Counties there is verry little probability of an Alteration for the better—I want to have the opinion of your Set Concerning it, by the next Post. . . ."⁴⁵ The "set" took steps that met with Caesar's approval. They drew up instructions (rather than petitions) to the members for the county, that is, to themselves. The members were to comply with the recommendation of Congress. If the assembly refused, they were to get that body to appoint a convention; and if that were re-

⁴² Rodney's analysis was repeated in several documents of the 1790's, in Hist. Soc. of Del. It is probably one of the few of his claims which must be allowed, always bearing in mind the fact that the Tories helped start resistance rolling, and could not stop it before it reached independence, and that the stupidity of the British did nothing to help the Loyalists, while the organized radicals of Delaware's sister colonies lent actual armed resistance to the Rodneys and their fellows. See Hancock, *Delaware Loyalists*, *passim* and for attitudes of the churches, pp. 44-50.

⁴³ May 17, 1776, from Philadelphia. Ryden, *Letters . . . Caesar Rodney*, p. 81.

⁴⁴ Caesar to Haslet, Philadelphia, May 17, 1776. *Ibid.*, pp. 79-81.

⁴⁵ Caesar to Thomas, Philadelphia, May 22, 1776. *Ibid.*, pp. 82-83.

fused, the Kent members were to withdraw and dissolve the assembly. This document was forthwith put in circulation and presented to whatever public opinion groups were available. Of Thomas's sixty-eight Light Infantrymen, twenty-six signed and the rest thought it over.⁴⁶ The pressure was on.

At this time [wrote Allen McLane in 1818], the line was drawn between Whig and Tory. Those opposed to Independence was Demonated [*sic*] Tors and many of the Whigs treated them as Enemies. When the Question was first Agitated in the committees a Considerable Majority was Opposed to the measure. The few whigs (and very few indeed), became Desperate Dreaded the Consequence of being Captured and treated as Rebels. Attacked the Disaffected with Tar and Feathers, Rotten Eggs &c. &c. and succeeded in silencing the Disaffected and then filling these Committees with men Determined to be free.⁴⁷

Thomas Rodney, indeed, had never been more mistaken in his life than when, misled by about twenty-four hours of silence after the resolution became public, he said he thought it would meet with no opposition in Kent.⁴⁸ The Tories started circulating their counter-propaganda and petitions, some of them printed in Philadelphia. Haslet feared the issue: "... fear Congress must either disarm a large Part of Kent & Sussex, or see their Recommendation treated with Contempt. . . Disorders spread."⁴⁹ The Tory petition was the center of a row, led by Squire John Clarke, which broke up the muster in Mispillion Hundred. Some soldiers burned down a house. The old reliable cry of Church versus Presbytery was raised. Haslet felt it necessary to send orders to Lewes (Sussex) to guard the ammunition and if necessary to seize hostages.⁵⁰ Parson John Miller, a hot Presbyterian patriot, was clear in his own mind that the Tories had collected many more signatures than the Whigs.⁵¹

On June 8 the Committee of Inspection for Kent sat in Dover to discuss the resolution. There was assembled a large crowd, which

⁴⁶ Thomas to Caesar, Dover, May 26, 1776; Caesar to Thomas, Philadelphia, May 29; Haslet to Caesar, May, 1776, which reveals that Killen, given the job of composing the document, faltered and refused—"... twas not his business to Collect the Sense of the People &c. . ."; by June 2, Rodney said most of his company had signed (to Caesar). *Ibid.*, pp. 83-88.

⁴⁷ Hancock, *Delaware Loyalists*, p. 5. As Hancock points out, the ardent patriot Tilton gave essentially the same picture in Timoleon, *Dionysius*.

⁴⁸ Thomas to Caesar, Dover, May 19, 1776. Ryden, *Letters . . . Caesar Rodney*, p. 82.

⁴⁹ Haslet to Caesar [May, 1776]; Thomas to Caesar, June 2. *Ibid.*, pp. 87, 88.

⁵⁰ Haslet to Caesar, Longfield, June 5, 1775. *Ibid.*, pp. 88-89.

⁵¹ John Miller to Caesar, near Dover, July 8, 1776. *Ibid.*, p. 96.

THOMAS RODNEY

turned into a mob.⁵² John Clarke, said to be the bearer of the Tory petition or remonstrance,⁵³ was seized and put in the pillory and egged. The petition was destroyed.⁵⁴ Rodney was in the committee room when this happened.

Haslet had exhibited charges in the committee against Clarke, but they were not considered, because the committee had more important business: the instructions to members of the assembly. Rodney spoke for independence, showing from Montesquieu and other writers the propriety of independent government. The instructions were approved. When Thomas White burst into the meeting to report that Clarke had been seized, Rodney ran out and asked Haslet, watching the scene idly from the door of Bell's Tavern, for officers to stop the mob action, which Rodney said was wrong. Haslet shrugged his shoulders and said he "knowed nothing about it," so Rodney, according to his own account, had to face the mob alone and release the victim from the pillory.⁵⁵

White, who like Clarke was a member of the Committee of Inspection and like him was known to be opposed to implementing the resolution of Congress, was himself either roughly handled by the mob or merely frightened.⁵⁶ He and Clarke ran off to Richard Bassett, captain of the Company of the Light Horse.⁵⁷ Bassett then sent out some of his troops to "stir up the countryside." So according to Rodney he was the chief instigator of the first insurrection in Delaware against the Revolutionists. Thus it irked Thomas sore in the 1790's when Bassett proceeded from one honor to another. Bassett, being "bred up in low life" and therefore capable of "the most odious

⁵² "Became emotional" is the way Thomas put it. The events about to be described loomed large in Rodney's memory, and he constantly recurred to them in his journals and writings. He called the insurrection "Black Munday." It is rather vaguely known in published accounts, so that it must be followed in the principal one of Rodney's many mentions of it: an undated piece, signed "Dentatus," "For the Mirror," in answer to a piece in *The Federal Ark*, No. 4. There are two drafts, one without names of persons. The MSS are in Div. of MSS, Library of Congress.

⁵³ Hancock, *Delaware Loyalists*, p. 13. He says the petition was to be presented to Congress; it is hard to see why. The assembly would seem more appropriate on all counts.

⁵⁴ *Ibid.*

⁵⁵ "Notes on Timoleon's Biographical History of Dionysius," in Rodney's hand, in Brown Univ.

⁵⁶ The last from Timoleon, *Dionysius*, quoted in Hancock, *Delaware Loyalists*, p. 21. Timoleon refers only to a subsequent justice, who could have been Richard Smith rather than White. Rodney named White as having been present.

⁵⁷ White and Bassett were leading members of the Methodist Society.

ANGLO-AMERICAN LAW ON THE FRONTIER

villainy,"⁵⁸ was one of the first United States senators from Delaware, and governor of the state, 1799-1801.

About midnight (the day was Sunday) Thomas heard of Bassett's plotting, and the Light Infantry and other Whig companies were alerted. Rodney's company was on parade at daybreak. They seized Bassett⁵⁹ and the store of arms. The insurgents meanwhile arrived at Walker's Branch about 9:00 A.M. and would have parley. The Whigs wanted to fight, but Rodney and two ministers (no account gives their name or denomination) thought to settle the matter without battle. With the Whigs' permission, Rodney, with one man,⁶⁰ pressed through the mob and found Clarke and White in the rear. Captain Rodney demanded an explanation for this insurrection. They said the reason was the abuse which Squire Clarke had received, and they demanded that four of the Light Infantry (presumably the men who had manhandled Clarke) should be delivered up to them to be hanged. Rodney said they could disperse peaceably or he would march against them. "When the People with them heard This, they all rose like a flock of Sea fowl from the Shore, and fled home..." Timoleon recounts that one of the rebels, who later became second justice of the Kent County Court of Common Pleas, "hiding in the swamps, did not dare to come forth, until he had written the most abject concessions to the captain of the light infantry."⁶¹

There now broke out in Sussex a much more serious insurrection involving a large number of men. The Congress sent 3000 troops to put it down. Rodney's Light Infantry were part of a battalion that left Dover in the small hours of the night of June 12-13, but turned back under the mistaken impression that the uprising was over.⁶² Their captain was probably not present to lead the infantry, for the assembly had met in New Castle on June 11 to take action on the resolution that had bred so much trouble. Whatever their constituents thought about it, the Kent delegation was ready for radical steps. On the fourteenth the assembly approved the recommendation of Congress. On the fifteenth a resolution declared the necessity for temporary authority until a new government could be formed. In the

⁵⁸ Draft of a letter, certainly 1789, in Rodney's hand, in Hist. Soc. of Del. Bassett's father was a tavern-keeper who deserted his wife.

⁵⁹ In his bed, says Rodney, *ibid.*

⁶⁰ His notes on Timoleon say it was a Mr. Shee.

⁶¹ Quoted in Hancock, *Delaware Loyalists*, p. 21. Timoleon's account of Black Monday is at p. 20 of his *Dionysius*.

⁶² For the Light Infantry, Thomas Collins to Caesar, June 14, 1776. Ryden, *Letters . . . Caesar Rodney*, p. 90. The details of the Sussex uprising are not germane to this story. See Hancock, *Delaware Loyalists*, pp. 13-16.

THOMAS RODNEY

meantime, officers would execute their function in the name of the government of the counties of New Castle, Kent, and Sussex, upon Delaware, "as they used legally to exercise it in the Name of the King. . . ."

Delaware had declared her independence of both England and proprietary governor. There was a related matter that required action. On June 7 Richard Henry Lee had moved in the Continental Congress that the colonies were and ought to be independent; that they seek foreign alliances; and that they form a confederation. Consideration was postponed so that delegates from some states could seek revision of their instructions. In March the Delaware delegates had been instructed to seek reconciliation with Great Britain. Now on June 15 new instructions made no mention of reconciliation. The delegates (Caesar Rodney, McKean, and Read) were to concur in forming the confederation, in concluding treaties with foreign countries, and in such other measures as "shall be judged necessary for promoting the liberty, safety, and interests of America. . . ." The delegates were free to vote for Lee's resolution.⁶³

Caesar Rodney, as speaker of the assembly, was now *de facto* head of the government of the Lower Counties. He hastened off to Sussex to deal with the continuing insurrection. Sometime quite close to the end of June he was back in Dover; he was not in Philadelphia on July 1 when Lee's resolution came up in the Committee of the Whole. George Read voted against it; Thomas McKean for it. There then occurred one of the most celebrated incidents in Delaware history. Either Rodney was summoned by McKean, who later said he sent express for him, or he was aware of the urgency of the question but hung around Dover debating the matter until it was too late to arrive on the first of July. At any rate he proceeded to Philadelphia and cast his vote for the resolution in the formal vote on July 2, thus throwing Delaware's vote for independence.⁶⁴ It used to be possible to make a better tale out of this incident than can now be done, and the equestrian statue of Caesar in Rodney Square, Wilmington, is a reminder of the heroic and crucial gallop of Rodney that has echoed through the imagination of many a schoolboy.

Thomas opened all the stops on the story, and in later years made it one of his claims to merit. According to his version the Congress,

⁶³ Munroe in Reed, *Delaware*, I, 105; H. Clay Reed, "The Delaware Constitution of 1776," *Delaware Notes* (6th ser.), pp. 14-15. Text of assembly actions used in Ryden, *Letters . . . Caesar Rodney*, pp. 91-92.

⁶⁴ Ryden, *Letters . . . Caesar Rodney*, p. 93 n. 4 and p. 94 n. 3, traces what is known of Caesar's movements between June 22 and July 2.

ANGLO-AMERICAN LAW ON THE FRONTIER

which had agreed on unanimity in a majority vote, was evenly divided and Delaware's delegates likewise, so that Caesar held the balance for the entire vote on the Declaration (instead of Lee's resolution). Caesar was in Dover, undecided. Thomas called out his Light Infantry, two-thirds of whom counseled for independence. Caesar asked for Thomas's opinion, for which he had great respect because he knew Tommy was divinely inspired. Thomas put the case for independence more cogently, said Caesar, than anyone in Congress. Whereupon Caesar "called for his Carriage" and set out for Philadelphia.⁶⁵ Thomas was therefore responsible for the adoption of the Declaration of Independence.

What germ of truth may lie in the center of so many apocrypha it is impossible to tell. One is inclined to credit the clause that indicates that Caesar made his ride in a carriage—dampening information, as unheroic as if Revere had dashed across the countryside in the family surrey. The statement is thrown into the narrative so incidentally and is so out of keeping with the epic dramatization of the body of the tale that it is possible Rodney really remembered that Caesar left Dover in that manner.

Thomas's latter-day effort to associate himself with the great Declaration arouses some conflicting thoughts. There can be no doubt that the Rodneys, in their respective spheres, deserve credit for agitating and winning the independence of the United States. But there is no evidence that the bosom of either swelled with rapture over the great philosophical propaganda with which the Declaration begins. And Thomas did not believe the premise of the equality of men and their endowment with natural rights. The writer does not remember seeing in his voluminous papers even a pretense that he did, and that is remarkable, because almost every other pretense is there. Thomas once expressed some of his dislike for Thomas Jefferson in a sneer at the Declaration. "It has always been much Commended but for my part I always Thought there was a purile Countinane in the Charges exhibited against the King"; and the crux of the matter, the resolution of Parliament on its right to tax the colonies, was buried in petty detail.⁶⁶

At any rate there was work to be done. Caesar called the assembly to meet on July 22. Thomas was doubtless present at this session,

⁶⁵ Like all such tales, Rodney put this one down in many places. One of the fullest versions is in a draft, Ionia Farm, May 15, 1793, to the chief justice of Pennsylvania (McKean), in the Hist. Soc. of Del.

⁶⁶ Rodney's Journal, March 12, 1797, in Hist. Soc. of Penna.

THOMAS RODNEY

which adopted the Declaration of July 4, and on July 27 recommended that the election of a constitutional convention be held on August 19.⁶⁷ There was another election to be fought, but Caesar had to return to Philadelphia, leaving Thomas as lieutenant.

Thomas returned home on July 29. The Committee of Inspection met and proceeded to the courthouse, where the President read the Declaration of Independence and the resolution of the Delaware house calling the convention. Three cheers from the crowd. The committee sent for a portrait of George III. The drummer of the Light Infantry bore this effigy before a procession of the committee and the Light Infantry, which marched around the square to music in slow time, and then burned the effigy. "Compelled by strong necessity, thus we destroy even the Shadow of that King who refused to reign over a free people."⁶⁸

Not content with the burden of a vital poll, Thomas and his "patriotic or in other words independent party" determined to procure also an investigation by the committee (of Inspection?) of the insurrection of June 9 (Black Monday). Caesar thought this imprudent and he asked some remarkable questions in plain English. He wanted to know, for example, whether it was sensible to expose to the enemy at the gate the numbers of their friends in Kent, and what made Thomas think the committee comprised enough patriots, and patriots of good sense, to conduct such an inquiry. Above all, there was no use in irritating people on the eve of an important election.⁶⁹

Pooh! Thomas had the entire situation well in hand. The committee "unanimously" ordered an inquiry into the insurrection, and sent out summonses. The Tories put up a ticket for the constitutional convention that included the principal men whom the committee would investigate: Bassett, Clarke, and White. In addition the list included Ridgely, Jacob Stout, Collins, and Cook. The last two—old associates of Caesar's whom, it will be remembered, Thomas had helped alienate—were "the Heroes" of the Tory tickets. The Whigs put up the two Rodneys, Killen, Banning, and Loockerman, among others, and Thomas was sure this ticket would carry. Caesar thought him "too sanguine."⁷⁰

⁶⁷ Reed, *Delaware Notes* (6th ser.), p. 16.

⁶⁸ Thomas to Caesar, Dover, July 30, 1776. *Delaware History*, III (Sept., 1948), 109-110.

⁶⁹ Caesar to Thomas, July 10, Aug. 3, 1776. Ryden, *Letters . . . Caesar Rodney*, pp. 97-98, 99-100.

⁷⁰ Thomas to Caesar, Dover, Aug. 5, 1776; Caesar to Thomas, Philadelphia, Aug. 14, 1776. *Ibid.*, pp. 101-102, 103.

ANGLO-AMERICAN LAW ON THE FRONTIER

He was right. Thomas wrote on election day that he had the yellow jaundice and that the lowest man on the Tory ticket was running 150 votes ahead of Caesar, who was the highest man on the Whig ticket. Caesar was furious. He blamed Thomas for poor conduct of the campaign in general and in particular for letting a company of troops (i.e., voters) leave the county just before the election. Further, Caesar was informed that the misconduct of Thomas's Light Infantry "had drawn down the resentment of the people." The "folly and ingratitude of the people" determined Caesar to retire when times were less perilous. As for Thomas, "nothing but the great cause of Liberty which we have been embarked in could have induced me (who have an increasing famaly & so little for them) to have spent so much of my time & money in publick servises."⁷¹

The 1776 convention, after framing a government, set an election for the first assembly of the new Delaware State for October 21. McKean's protest that the Delaware battalions would not have served their time until December, and therefore would not be present to vote, was disregarded. Caesar wondered if Thomas's party intended to submit, or try again. There seems to be no record to answer his question. Haslet was in New Jersey, Caesar in Philadelphia, Thomas recovering from the jaundice, and Barrister Killen was low with the bilious fever, not very sick but "so frightened that he has not the Spirit of a mouse."⁷² If this battered crew entered the race in October, they were beaten.

II. *Revolutionary Soldier, Merchant, and Congressman, 1776-1783*

AHEAD OF Thomas Rodney, however, lay more important work than Dover politics. He had a rendezvous with destiny. At the same time that the political fortunes of the Rodneys sank, so did the star of the Revolution. Whipped in New York, Washington fell back into New Jersey late in November—through Newark and Brunswick, through Princeton and Trenton. On the eighth of December he crossed the Delaware. On the twelfth the Continental Congress dumped full powers on Washington and adjourned to Baltimore. Philadelphia

⁷¹ Thomas to Caesar, Aug. 19; Caesar to Thomas, Aug. 21; Aug. 28; Thomas to Caesar, Aug. 30 (all from Dover and Philadelphia). *Ibid.*, pp. 103-107.

⁷² McKean to Caesar, New Castle, Sept. 19, 1776; Caesar to Thomas, Philadelphia, Sept. 25; Thomas to Caesar, Dover, Sept. 23. *Ibid.*, pp. 123, 130, 128.

THOMAS RODNEY

seemed doomed. Gloom sat heavy on the patriot ranks; desertion decimated them.

In Dover, Caesar Rodney was heavy with foreboding.

Tomy your counsel has not been
Successful as you thought
I fear in this important scene
We have misfortune wrought.

Tommy prayed. Then God sent down a messenger, who took him to a plain on which there were scenes of debauchery, like unto fairs and circuses and horse races. The people were worshipping the image of a man, and bringing offerings to his attendants, who were dressed in knee pants and the other accoutrements of waiters in the best taverns. Rodney prayed again, and the vision was that of opposing armies, moving rapidly through Trenton, Burlington, and Bordentown. For the third time Rodney prayed for his cause, and there came the first prime archangel bright and with him Rodney surveyed Princeton and victory. If, said the archangel, God found one perfect man, he would save America.¹

Thomas told Caesar of this visitation and informed him that he was setting out for camp, evidently operating on the assumption that he was The Man. Caesar thought he ought to take the Light Infantry with him. Thomas waited two nights in vain for a sign to guide him on this point, but finally took such of his men as would go. Less than half of his company volunteered; with a few other

¹ Of this remarkable occurrence there are many accounts in the Rodney papers. Perhaps the fullest is a "poem," "The Caesariad," which was found in 1795 on top of Iron Hill rolled up in bark. It was copied into Rodney's journal for Aug. 16, 1796-April 12, 1797, now in the Hist. Soc. of Penna., and dressed with explanatory notes by Rodney. The writer does not remember seeing anything about archangels and messengers of God until misfortune and neglect had fallen upon Thomas after 1790. There is a contemporary memorandum book of events and names, not a diary, in the Hist. Soc. of Del. There is a diary, Dec. 14, 1776-Jan. 25, 1777, in the Div. of MSS, Library of Congress. Knowing it to be published in Vol. VIII of the *Papers of the Historical Society of Delaware*, the writer did not, unfortunately, scrutinize the MS to see whether it might have been written at divers times and places. Internally it bears some of the signs of a diary—occasional use of words "here," "at this place," etc. On the other hand, an entry that at the outset includes the phrase "This evening . . ." ends with the information that some troops other than Rodney's paraded at two o'clock "that night." He calls Colonel Cadwalader "General" throughout. Cadwalader was not (temporarily) brigadier general until some date after Dec. 22; the memorandum, which seems more nearly contemporary, calls him "Colonel" throughout. In short, if the published diary was a genuine one, it was probably subsequently doctored and rewritten.

It does not, however, contain some of the more extravagant claims found in the writings of the 1790's.

ANGLO-AMERICAN LAW ON THE FRONTIER

men there were thirty-five who set out on December 14, Rodney following the next day. On the sixteenth he met some of the fleeing congressmen at Christiana Bridge and attempted "to rouze and animate them." McKean told him that if Charles Lee, who was still in Jersey (and who was at this time thought a great general), could not prevent the British from crossing the Delaware, there was nothing to do but sue for peace. Rodney assured him there would soon be good news.

Arrived in Philadelphia on the eighteenth, the men of Dover mounted guard over a deserted town. On the next day Thomas supped with the Fishers, his wife's Uncle Joshua and Samuel and Miers—Quakers and great Tories. They informed him of Lee's capture (it had happened on the thirteenth, and the news ran in the streets by the fifteenth). They broke the news to him that Washington had sent for terms for reconciliation. The negotiations had been channeled through Colonel Joseph Reed, Washington's adjutant general, and the Hessian Colonel Carl Emil Kurt von Donap and so on to General William Howe in New York. The scoundrels then took Captain Rodney up on the mountaintop and showed him the world (they must have seen that there was more to him than mere Dover patriot): the Rodneys were to be secure in their property; Thomas would receive £10,000 sterling, and £20,000 worth of Pennsylvania lands; any office he chose in that colony, even the governorship, would be his. All he had to do was to refrain from interrupting the peace negotiations. "The terms in respect to myself are ample," said young Rodney. "But what will the British do for my country? Will they restore us to the situation of 1763?" The seducers were silent; they could not answer for that. Then spake Rodney: "I shall march tomorrow morning for camp and I shall not return until we have recovered all Jersey from Brunswick to the Delaware." And so saying he bade them adieu. His pledge was to be fulfilled.²

On the twenty-second of December the Light Infantry arrived at Bristol, where Colonel John Cadwalader was in command of about 1800 Pennsylvania militiamen. Cadwalader's chin was on his chest. He spoke of the dejection caused by Lee's capture. He confirmed the fact that negotiations were in progress. Nay, Rodney told him, "we must make no agreement with the enemy short of Independence."

² The terms of the offer are in "A Letter to a Stranger friend who was anxious to know why my conduct appear'd so misterious to many," in Hist. Soc. of Del. Also Rodney's Journal of Accounts, 1771-1775, Div. of MSS, Library of Congress, entry of Dec. 20, 1798. About this latter date he was reduced to rags and possessed three dollars.

THOMAS RODNEY

Cadwalader was astonished; what could be done? "I poured the fire of heaven in his bosom; He flamed like a Comet."³ "Attack across the Delaware," was Rodney's message. When Reed arrived from looking for mediators in Philadelphia, Cadwalader and Rodney fired him too. Rodney's counsel was sent off to Washington. He replied that he would attack, and set the night of December 25. The rest, as they say, is history.

History, indeed, is indebted to Rodney. He apparently bears the only extant news of Washington's peace negotiations. The writer thinks he knows what suggested to Rodney the fairy tale of December 22 at Bristol. It makes a curious psychological story and exhibits remarkable ingenuity in the Rodney brain of the 1790's, but we cannot here spin all the threads. It would seem that Rodney was building on a pamphlet by Joseph Reed, "Remarks on a Late Publication in the Independent Gazetteer" (Philadelphia, 1783). He and Cadwalader were enjoying, in 1782, a nasty row in the newspapers.⁴ It appears, for example, that Cadwalader intimated that negotiations of Reed with von Donap were perhaps treasonable outgrowths of Reed's defeatism. Reed said he was merely arranging with him that troops of both sides would cease their depredations on the town of Burlington. Here is the material out of which Rodney built peace negotiations.

In answering the charge of defeatism, Reed preceded Rodney in claims for the twenty-second. He pointed to a letter of that date, from Bristol, informing Washington that the spirit of the militia was high and that troops would cross the river on the twenty-third and attempt an attack. Reed's letter further counseled boldness, if only out of desperation. Reed printed also a communication from Washington dated the next day agreeing that necessity would justify any attempt, and announcing his intention for the twenty-fifth. Make Reed (and Rodney added Cadwalader) responsible for the mettle of the Commander-in-Chief; and it is a simple step to make Rodney the motivating force behind Reed.⁵

³ This fine sentence is in "A Letter to a Stranger. . . ."

⁴ Reed's pamphlet and Cadwalader's "Reply to General Joseph Reed's Remarks" (Philadelphia, 1783) both used in *A Reprint of the Reed and Cadwalader Pamphlets, with an Appendix* (n.p., 1863).

⁵ Reed's letter of the twenty-second is printed in William B. Reed, *Life and Correspondence of Joseph Reed* . . . (2 vols.; Philadelphia, 1847), I, 271-273. The essential portions are in John C. Fitzpatrick (ed.), *The Writings of George Washington* . . . (Bicentennial ed., 39 vols.; Washington, 1931-1944), VI, 426 n. 68. Fitzpatrick thinks (*ibid.*) that the Washington answer of the twenty-third, on which Rodney built a bit, is a forgery, and he gives some of the history of its printing. The question is immaterial here, but it seems to me a ghastly risk for Reed to have

ANGLO-AMERICAN LAW ON THE FRONTIER

It must be noted that the entire Reed-Cadwalader exchange, buttressed with all sorts of documents and affidavits respecting the attitudes and thoughts of those gentlemen on December 22, 1776, makes no mention of one Thomas Rodney.

Rodney was not hindered in persuading himself of the truth of his story by any clear documentary evidence in his day as to when Washington made the decision to turn and fight back. In truth, there seems to be no such evidence even now. In his communications of December 14, Washington speaks vaguely of attack and of concerting some important stroke, but his plans seem to have been nebulous, and sometimes connected with possible action by Lee⁶—who had been captured the day before. But he had something definite in mind at least by the twentieth,⁷ that is, before either Rodney or Reed claimed to have given counsel.

Cadwalader was given permission to keep "the Dover Militia"⁸ who had been ordered in Philadelphia to proceed to headquarters. They were combined with an outfit of four companies of Philadelphia militia under the command of Captain George Henry. Washington ordered Cadwalader to cross the river and attack in concert with his raid on Trenton, one hour before day on December 26, but he did not expect much. "If you can do nothing real, at least create as great a diversion as possible."⁹

Colonel Cadwalader, late of the Philadelphia Silk Stockings, fumbled into failure one day and fumbled into success the next. On Christmas night he marched his troops to Dunk's Ferry and sent Henry's and Rodney's men over to cover the crossing of the Delaware. The night was cold; snow, sleet, and rain were whipped by a stiff wind. The river was full of ice. Rodney's outfit and several hundred

run, to print it in 1783 when Washington could have crushed him with a disavowal. It occurs at pp. 66-67 of the reprint of the pamphlet.

Rodney went so far as to refer to the transmission to Washington of his counsel in a letter to Washington, from Dover, Feb. 14, 1794. Draft in Hist. Soc. of Del.; no proof letter was dispatched.

⁶ Fitzpatrick (ed.), *Writings of Washington*, VI, 366-374.

⁷ He wrote to Colonel Samuel Griffin, Dec. 23 (*ibid.*, VI, 428) that he wished Griffin could go to Bristol ". . . in order to have conducted matters there in cooperation with what I hinted to you as having in view here." Whether the hint was in writing or oral, the circumstances and nature of the letter permit the conclusion that the hint was given before Griffin's hit-and-run sally into New Jersey, which began not later than the twenty-first. Leonard Lundin, *Cockpit of the Revolution: The War for Independence in New Jersey* (Princeton, 1940), p. 190.

⁸ Washington to Cadwalader, Dec. 25, 1776. Fitzpatrick (ed.), *Writings of Washington*, VI, 438.

⁹ Same to same, Dec. 24; Dec. 25; Dec. 25, 6:00 P.M. *Ibid.*, VI, 429, 438, 440-441.

THOMAS RODNEY

more troops made their way across. Then Cadwalader decided he did not know how to get his field pieces over and ordered a retreat. The men of Dover stood guard until the recrossing was accomplished, intensely irritated, and half of a mind to invade Jersey without either guns or general.

Exhilarated by Washington's great coup at Trenton, Cadwalader ordered a fresh crossing next day (twenty-seventh), which succeeded this time, the Light Infantry covering the operation as before. But when he got across, he learned that Washington had returned to Pennsylvania. Ensued much backing and filling, but it was wisely determined that the militia could not stand much more foolishness, and it was decided to attack Burlington,¹⁰ where everyone was sure there were no enemy troops.

With Rodney flanked by a rifle battalion on either side, the march was made to Burlington by 9:00 P.M. At 4:00 A.M. next morning they set out for Bordentown, where they captured large stores; in the afternoon the light troops set out in pursuit of the enemy. But there was a limit to the stamina of the infantry; they paused at Crosswicks for a good night's rest, and, learning that the enemy had fled, spent the twenty-ninth through the first at the village of Allenton, a rest broken only by an abortive expedition that hoped to rescue Lee.

On December 30-31 Washington had recrossed to Trenton and learned that Cornwallis was moving toward him with a formidable force. He sent for Cadwalader and for a newly arrived militia force in Bordentown. Rodney left for Trenton at 2:00 A.M. on January 2, 1777. At the Assunpink Creek, where Washington awaited the attack, Rodney's troops were on the right. He and his company helped defend the bridge; one of his men got scared and ran off.

At the day's end the British complacently rested. But not Washington. This was no place for him. He took his army and slipped away toward Princeton, where there were stores guarded by a small force. Over roads fortunately frozen, the American army moved through the night, led by Thomas Rodney and the Dover militia, along with the Red Feather Company of the Philadelphia Light Infantry. In the dispositions made at Stony Brook, about two miles from Princeton, Rodney was rejoined to Cadwalader's brigade and they were placed under General Hugh Mercer. With Mercer's brigade was Colonel John Haslet of the Delaware Continentals, Rodney's friend and political associate. As this division advanced, Rodney's

¹⁰ We are now following Rodney's printed diary and Christopher L. Ward, *The Delaware Continentals, 1776-1783* (Washington, 1941), pp. 130-131, 138 ff.

little company flanked it on the right, strung out Indian file.

This force of Mercer's met the main strength of the British forces by accident. Lieutenant Colonel Charles Mawhood had set out for Trenton with two of the three Princeton regiments when he found out what was going on and turned back. He and Mercer clashed. Mercer was killed, and so, a little later, was Haslet. The brigade fled in a rout and ran into Cadwalader's militia. Their instinct to join their betters was reinforced by hot grapeshot fire from the British, and the whole outfit fled to the woods in the rear. Washington tried personally to rally them, but in vain.

This was the crisis of the Battle of Princeton. A little battery of Philadelphia artillery—Rodney says two pieces—stood its ground with skill and bravery. Rodney, on orders, crossed the fire to the left of the artillery. He could persuade only fifteen of his men to go with him, and the fire was so dreadful that he "could not keep them all there. . . ." Rodney was grazed by three balls. Under cover of some stacks and buildings his little group and "about 30 of the Philadelphia infantry" supported the two guns in holding at bay the enemy until Washington succeeded in forming a line. Mawhood was then routed in turn.¹¹ In the mop-up operations a number of prisoners and a disappointing quantity of stores were taken.

The Americans moved on through Kingston and down the Millstone River toward Somerset Court House. Rodney was again leading the van of the army. A party of British horse arrived at one end of the bridge just as the Americans reached the other. Washington ordered Rodney to take some carpenters and break up the bridge. After rests along the way, Washington's army arrived at Morristown on January 6, where he went into winter quarters.

Rodney, in command of his regiment by virtue of the absence of Captain Henry, had the distinction of having his command appointed (January 7) guard to the General himself. On the tenth the time for which the Dover men had enlisted was up, and although they were implored to remain, they left for home on January 14 and 15. Their captain felt that they had "Stained those Glorious Lorrels"¹² so hardly won, but as a matter of fact he himself was only three days behind them in departing.

¹¹ Published diary, Jan. 3. Credit to artillery and handful of militia not from Rodney this time, unless Lundin, *Cockpit of the Revolution*, p. 210, is following Rodney's account.

¹² Thomas to Caesar, Morristown, Jan. 14, 1777. Ryden, *Letters . . . Caesar Rodney*, p. 154.

THOMAS RODNEY

Caesar Rodney had been busy trying to persuade militiamen to march to the scene of action. He himself had proceeded to Philadelphia and been ordered to Trenton, to serve as a sort of traffic cop and expeditor of troops coming up from the south. Some of the Delaware militia were among those passed on to Washington, but they did not last as long as John stayed in the army. There at Trenton on the nineteenth, Thomas found his brother.

With Mutual Joy they long imbracd
By Mutual wonder won
And when the pressing rapture ceasd
He asked if all was done?

Tomiris replied "all intended now
"But the divine decree
"Has fixt it Sure, in Spight of How
"The States Shall all be free."

"What joy Said he [Caesar] must fill each State
At whats already Seen
Tomy the wonders done are great
You've highly favoured been."¹³

Caesar asked Tommy to serve as his brigade major, which he did until January 25, when he set off for Dover.¹⁴ He stopped off in Philadelphia to say I-told-you-so to the Fishers, and arrived home from the wars on January 28. The shopkeeper reopened his store.¹⁵ The squire bought 1200 acres of land in Marshy Hope, on credit. But the times were bad, prices were high, and the politician and officeholder was out of favor. Rodney was still a member of the Orphans' Court and Common Pleas in mid-February, but only because the Tory legislature had not got around to electing his successor.

"When Vice Prevails & Wicked men bare Sway
The Post of Honour is a Private Station

Adison"

Thomas did not find business flourishing and prepared "to move to the Landing in April to Contract expence & Trade a little."¹⁶ The year 1777 might have been depressing for him, but it was not dull.

¹³ "The Caesariad."

¹⁴ Printed diary, entries Jan. 20, 25. Caesar's Orderly Book, Jan. 16-Feb. 19, 1777, in Hist. Soc. of Del., is printed in Ryden, *Letters . . . Caesar Rodney*, pp. 155-168.

¹⁵ Entries in Rodney's Account Book, Hist. Soc. of Del., resume Feb. 5, 1777.

¹⁶ Thomas to Caesar, Dover, Feb. 16 and 26, 1777. Ryden, *Letters . . . Caesar Rodney*, pp. 178-179. Thomas expressed in this letter a wish to be appointed commander of the Delaware field battalion. The date on which a new court was elected

ANGLO-AMERICAN LAW ON THE FRONTIER

The Tory government, although it did not re-elect Caesar to the Congress, appointed him a brigadier general in the militia. Throughout the spring, summer, and early autumn he had a lively time, repressing Tories in Kent, actively hunting down Tories in Sussex where there was again insurrection, and trying to marshal the forces of Delaware against actual invasion of the state from the outside. Late in August Howe landed at the Head of Elk, beat American forces at Coach's Bridge, Delaware, and defeated Washington at the Brandywine on September 11. A British expedition to Wilmington captured Delaware's lukewarm president, Dr. John McKinly, and the state archives. In these activities, Thomas was his brother's brigade major.¹⁷ Whether Thomas accompanied him on his movements, or participated in the musters of the militia to fight both neighbor and invader, does not appear from the records.

The October elections were riotous in their holding—the Whigs ran the Tories out of the courthouse at Lewes, so no returns came immediately from Sussex. They were confusing in their returns. Timoleon said moderates in Kent balanced off radicals in New Castle, so that the first meeting of the assembly was unable to transact business. It is evident, however, that friends of the Revolution were again able to raise their heads in the legislature—perhaps invasion had had its effect—and Caesar was again elected to Congress. Further than that, on March 31, 1778, the assembly elected Caesar president of the Delaware State.¹⁸

Thomas could again look forward to regular meals. He inherited immediately his brother's job as judge of the Admiralty Court, which paid £10 a year and fees.¹⁹ On April 20 he was appointed, by resolution of the house, clothier to the Delaware Regiment, and \$7500 was authorized to be placed in his hands. The council grudgingly concurred a month later. Among his activities in this post, a vexing

for Kent, leaving Thomas out, was Feb. 21. (*Minutes of the Council of the Delaware State, from 1776 to 1792*, "Papers of the Historical Society of Delaware," Vol. VI, Wilmington, 1887, p. 82.) The new court included our acquaintances from Black Monday, Clarke and White.

¹⁷ Caesar Rodney's Orderly Book, June-Sept., 1777, is in Thomas Rodney's handwriting. Original in Hist. Soc. of Del. Printed in Ryden, *Letters . . . Caesar Rodney*, pp. 224-233.

¹⁸ Munroe in Reed, *Delaware*, I, 112.

¹⁹ Auditor's report, Nov. 4, 1785, in *Votes and Proceedings of the House of Assembly of the Delaware State, At a Session Commenced at Dover, on Monday, the eighth Day of January, in the Year of Our Lord One Thousand Seven Hundred and Eighty Seven* (Wilmington, 1787), p. 51, showed due to Rodney £70 for salary from April, 1778, to April, 1785. Rodney's election was on April 3 (*Minutes Council*, p. 215). Scharf, *History of Delaware*, I, 247, is in error.

THOMAS RODNEY

business, was a trip to Philadelphia in October, accompanied by Colonel Charles Pope, to engage the Continental clothier general to provide winter apparel. His charge was ended by the election, January 18, 1779, of a clothier general for the State.²⁰

June 20, 1778, he received the accolade of being elected chief justice of the Court of Common Pleas and Orphans' Court for the County of Kent—the head of the squirearchy.²¹ This post of honor he refused, because he was appointed to a much more lucrative job which precluded the chief justiceship, the register of the Probate of Wills and Granting Letters of Administration in and for the County of Kent. This plum was in the gift of his brother and the Privy Council. Once again he was succeeding Caesar in an office. (The complexion of the assembly must have changed again by 1779, for on Rodney's declining, John Clarke was elected chief justice of Kent.)²²

Finally, to complete the 1778 bag of offices, Caesar appointed Tommy colonel of the Eighth Regiment of the Delaware Militia.²³ The title of colonel he bore proudly the rest of his life.

There ensued next in Thomas Rodney's life an interlude whose details are both curious and cloudy. Little can be discerned from the documents available except that Rodney's actions were unprofitable and probably disreputable. Delaware, in response to wartime pressures of supply and price and in accord with requests of the Congress, had placed an embargo on shipments of wheat and flour. There followed the necessity for regulating, through requisition and through purchasing agents, the supply of grain to the Continental Army, to the French fleet, and to other colonies. Here were possibilities of favoritism, profits, and scandal. There were of course bootlegging and trade with the enemy, activities that were heightened by the opportunities of Delaware's vast waterfront.

An appointment of a purchasing agent, apparently involving a large area, was made by Caesar Rodney in October of 1779. ". . . In Virtue of the power Vested in me by the Congress and the Delegates of Delaware, Maryland and South Carolina, I have appointed

²⁰ *Minutes Council*, p. 285; Rodney to the General Assembly, Oct. 30, 1778 (Hist. Soc. of Del.); "An Account of Cash Expended by Thomas Rodney, Esqr. As Clothier & Agent for the Delaware Regiment 1778—" in "Thomas Rodneys Acct. book 1780-81 & 1782 . . ." in Div. of MSS, Library of Congress. *Minutes Council*, pp. 338, 355, 356, 363.

²¹ *Ibid.*, pp. 294, 355 (date of Jan. 14, 1779).

²² *Ibid.*, p. 363.

²³ Commission, dated Sept. 8, 1778, in Hist. Soc. of Del.

ANGLO-AMERICAN LAW ON THE FRONTIER

a person to Superintend the purchasing the Quantity of Flour recommended by the Delegates . . . ,” and Caesar had given him an order for \$60,000 to begin his business with.²⁴ Now this person could have been Jonathan Rumford, a prominent merchant and shipper of Wilmington, with whom Caesar had business connections—or he could have been someone else. It is permissible to think the job was considered a suitable niche for Tommy. On October 28, the day after the above letter, Thomas commissioned George Latimer as a deputy in Delaware for the purchasing of wheat and flour for the use of the United States.²⁵ Furthermore, Thomas soon thereafter took the decision to move to Wilmington, perhaps to conduct this new job or to help Rumford do it, certainly to go into business with Rumford, in whose enterprises Caesar put some capital.²⁶ In December Thomas was looking for a house to buy,²⁷ but it was not until the next summer that he was able to move his household goods.²⁸ Maybe, at the age of thirty-six, he was launched on a career.

When in July of 1780 John Holker, French consul and marine agent in Philadelphia, asked President Rodney for permission to buy flour for the French fleet, Caesar told him that he would have to have the consent of Congress and that it would be preferable for him to have a purchasing agent within Delaware. Jonathan Rumford (and presumably Thomas) would be suitable.²⁹ At about the same time, Robert Morris was engaged by Caesar de Luzerne, the French minister, to procure flour for the Spanish fleet. When he applied to Caesar Rodney for flour, the latter told him he would have to work through Holker³⁰ (and therefore through Rumford and Thomas). In after years Thomas considered it a creditable matter, which he spoke of often, that he had supplied the Spanish with flour; and he claimed that when he was attending Congress in New York in 1786, Gardoqui offered him a hundred square miles of

²⁴ Caesar Rodney to John Dickinson, Dover, Oct. 27. Ryden, *Letters . . . Caesar Rodney*, p. 324.

²⁵ Commission in Hist. Soc. of Del. Latimer was a member of the assembly from New Castle and a colonel in the militia.

²⁶ Some of the accounts for 1781–1782 of Thomas's partnership with Rumford are in his journal of accounts for 1780–1781 in Div. of MSS, Library of Congress.

²⁷ Thomas to Caesar, Dover, Dec. 9, 1779. Ryden, *Letters . . . Caesar Rodney*, pp. 329–330.

²⁸ “Invoice of Hous Hold goods packed up for Wilmington July 27th 1780,” in Hist. Soc. of Del.

²⁹ Caesar to Holker, Dover, July 24, July 26, 1780. Ryden, *Letters . . . Caesar Rodney*, pp. 357, 360.

³⁰ Caesar to Holker, Wilmington, Aug. 9, 1780; Caesar to Robert Morris, Wilmington, Aug. 10. *Ibid.*, pp. 363–364.

THOMAS RODNEY

land west of the Mississippi in gratitude for his services.³¹ By September 1 Rumford and Rodney had sent Holker 747 barrels of flour.³²

Rodney's income seemed promising. He and Rumford had already taken in a commission of £10,000. On September 6 the schooner "St. Patrick," which (or its cargo) was partially owned by Caesar Rodney, arrived safe in port with a cargo of sugar, cocoa, coffee, and cotton that sold for a net yield of £80,000.³³

The owners, who included Rumford, naturally yearned to send out the "St. Patrick" to repeat the performance, and to load her with 200 barrels of embargoed flour. President Rodney and his privy council had the suspending power over the embargo act. Thomas wrote to his brother an involved argument in favor of such a suspension for the "St. Patrick": there is no longer a scarcity of flour, Delaware needs trade, there is plenty of bootleg shipping going on, and so forth.³⁴ Caesar quite correctly replied³⁵ that a law, even an unpopular one, was a law, and he would not relax it for any private purpose, "More especially in a case Where I am personally Concerned."

Now in later years the self-esteem of Thomas was served by his convincing himself that in December of 1780, when he was "Superintendent of Exportation of Flour to the Havannah," he was offered and refused a bribe of £30,000 to £50,000 to let some merchants export. He sometimes alleged the bribers were British agents, and coupled this incident with the fortune he thought he had refused in December of 1776 to demonstrate the purity and strength with which the patriotic fire had burned in his bosom. In a "Memo of what passed between J. R. & T. R. December 1780," however, he says the offer was made by J. R.³⁶ The conclusion is hard to escape that the

³¹ This last in Rodney's Journal, July 9, 1797, in Hist. Soc. of Del. The writer has found nothing on this business. In one place Rodney says flour was shipped to "the Havannah" (the fleet was in the Indies); in another he says it was shipped to the "Spanish Settlements."

³² Thomas to Caesar, Wilmington, Sept. 1, 1780. Ryden, *Letters . . . Caesar Rodney*, p. 373.

³³ Thomas to Caesar, Wilmington, Sept. 6, Sept. 12, Oct. 7, 1780. *Ibid.*, pp. 376, 377-378, 386.

³⁴ Thomas to Caesar, Wilmington, Sept. 13, 1780. *Ibid.*, pp. 379-380.

³⁵ To Messrs. Adams, Clerk and Rumford, Dover, Sept. 15, 1780. *Ibid.*, pp. 380-381.

³⁶ One of the accounts mentioning the British is in a chronological memorandum on his life. In Jan., 1790, Thomas prepared an affidavit of the alleged bribe (giving another date), with the insolent intention of having Jonathan Rumford sign it. The "Memo" of course says Rumford offered the bribe. All three documents are in Hist. Soc. of Del.

ANGLO-AMERICAN LAW ON THE FRONTIER

alleged bribe attempt and the effort to get Caesar to clear the shipment for the "St. Patrick" are related, either as blood brothers or as father and child. Perhaps Thomas was offered money and failed to earn it, or something less definite than an offer grew, as things were likely to do, in the fertile soil of his 1790 brain.

It is a wonder that Thomas got out of the exporting business without being besmirched from head to toe. Rumford had had dealings with Holker before Caesar nominated him to the latter. In 1779 a cargo of flour he had assembled for Holker had been seized because it had been bought at black market prices, and Holker himself had been the object of an investigation by a Philadelphia committee. This was at the same time that Robert Morris's relations with Holker in the flour business involved him in scandal and investigation. The Morris and the Rumford incidents were related and were connected in the investigation.³⁷ In September of 1780 Rumford was the subject of accusations in a newspaper. Thomas said the charges, presumably of illegal shipping, were false, and were animated by the villainous and insidious intention of injuring the Rodneys.³⁸ Finally, Thomas's partner is said to have gotten into "trouble with the Whigs over the sale of some grain" in 1782. "A mob plundered his home, in the excitement his skull was fractured, and he became an invalid for life."³⁹ Whether or not it was this catastrophe that ended Rodney's mercantile career, he removed to Dover late in the same year, 1782, and rented the house of Dr. James Tilton.⁴⁰ A few years later he would attribute this move to the declining state of Caesar's health,⁴¹ but, alas, he had to tell the truth to his long-suffering wife. He wasn't prospering. Fortune passed him by.⁴² Thomas was again a failure.

In the Wilmington years, however, Rodney had been a member of Congress, where, to hear him tell it, he had achieved enough solid accomplishments to immortalize any legislator, to say nothing of off-

³⁷ United States Congress, *The Revolutionary Diplomatic Correspondence of the United States*, edited . . . by Francis Wharton (6 vols.; Washington, 1889), III, 258-273; Hubertis Cummings, "Robert Morris and the Episode of the Poleacre 'Victorious,'" *Penna. Mag.*, LXX (1946), 239-257; William Graham Sumner, *The Financier and the Finances of the American Revolution* (2 vols.; New York, 1891), I, 223-231.

³⁸ Thomas to Caesar, Wilmington, Sept. 27, 1780. Ryden, *Letters . . . Caesar Rodney*, p. 385.

³⁹ Hancock, *Delaware Loyalists*, p. 52, citing Elizabeth Montgomery, *Reminiscences of Wilmington* (Wilmington, 1872).

⁴⁰ Rodney's Journal of Accounts, 1774-1799, Div. of MSS, Library of Congress.

⁴¹ Thomas to . . . , Feb. 20, 1785, draft in Hist. Soc. of Del.

⁴² Thomas to Betsey, The Landing, Oct. 31, 1782, in Hist. Soc. of Del.

THOMAS RODNEY

setting a little reverse in trade. Among these great deeds were the creation of the executive departments of the government, the planning of the Federal government, and a successful fight to have Benjamin Franklin included in the peace commission.

Rodney was elected to Congress on February 10, 1781, along with Thomas McKean, a patriot who had left the state years before to become chief justice of Pennsylvania, and Nicholas Van Dyke, a moderate Whig.⁴³ On February 26, 1781, he says, "Took my Seat in Congress for the First Time."⁴⁴ He attended for about eight weeks during the following year,⁴⁵ between mercantile enterprises in Wilmington. His arrival at Congress was in time for the celebration of the formation of the Confederation. The first of March was given up to festivities. At 10:00 A.M. a collation was spread at President Samuel Huntington's. At 5:00 Thomas dined at McKean's with an assembly of notables, and in the evening there were fireworks at the State House and from "Paul Jones ship."⁴⁶

Thomas has left us "caractors" of some of his fellows in this legislature, now known as the United States in Congress Assembled. Huntington he thought a mild, sound, plain republican, not of "shining abilities." Sam Adams's long membership had given him an intimate knowledge of the workings of Congress. He ". . . is particularly attentive to every thing that affects his own State or friends; he is neither eloquent nor talkative; but having the full command of his passions, and possessing a great deal of caution and Court cunning he is well fitted for a politician in every Case where great and good abilities are not requisite." "Doct'r Weather Spoon" was of the "New light Presbyterian Order," and learned. He "speaks with a low and broken Voice on the Scotch accent; And has all the design and arch Cunning that is necessary or practiced in an assembly of the

⁴³ *Minutes Council*, p. 611.

⁴⁴ "Proceedings in Congress, 1781 &c." in Div. of MSS, Library of Congress. All the material in this journal which relates to Congress is printed in, and will henceforth be cited from, Edmund C. Burnett (ed.), *Letters of Members of the Continental Congress* (8 vols.; Washington, 1921-1936). This caution should be added: Burnett failed to point out that Rodney got out this book in 1796, used blank parts for his journal, June 1-23 of that year, and presumably at that time added notes to his Congressional jottings. Most of his claims of accomplishment were thus made fifteen years after the event.

⁴⁵ Burnett, *Letters*, gives these dates for Rodney's attendance: Feb. 27-28, 1781 (V, lvi); March 1-10, April 11-18 or later, May 2 or earlier, May 8 or later, June 14 or earlier, July 12 or later, Jan. 28-?, 1782 (VI, xlv). He was paid £100 for this attendance. *Minutes Council*, p. 681.

⁴⁶ Thomas to Mrs. Rodney, Philadelphia, March 1, 1781, and Journal. Burnett, *Letters*, VI, 1.

ANGLO-AMERICAN LAW ON THE FRONTIER

Kirk of Scotland. But does not seem to possess much of that Candid integrity, Honesty and Wisdom which is necessary in the Governing an Honest Confederacy." There was also a Mr. Madison, fresh out of college and full of the conceit that is common "to youth and inexperience in like cases," without the gracefulness and ease which sometimes make such a character supportable. Dr. Thomas Burke he thought the ablest and most useful of the members; and James Duane an even-tempered, honest republican. The reader will remember that Rodney's acquaintance with most of the gentlemen he traduced was rather limited. His view of McKean, in 1781 chief justice of Pennsylvania and a delegate from Delaware, is, however, shocking. He knew him personally and through Caesar, whose partner McKean had been in the adroit moves that threw Delaware into rebellion against the King. McKean, said Rodney, ". . . is a man of talents—of great Vanity, extremely fond of power and entirely governed by passions, ever pursuing the object present with warm enthusiastic zeal without much reflection or forecast."⁴⁷

The Congress as a whole wanted practical, useful knowledge, thought Rodney.⁴⁸ He was led to this reflection by the members' complete failure to handle the financial problems of the United States. "Never," wrote a member from North Carolina, "was a poor fly more completely entangled in a cobweb than Congress in their paper currency." Before Rodney had been long in Congress, the currency was not worth a Continental. The many plans advanced for curing this serious sickness do not find a place in this biographical sketch. It must content itself with pointing out that Rodney addressed himself to the problem in a not altogether stupid way. He had long seen the futility of printing-press money. If Congress could not tax, he thought it should borrow, and he recommended tapping the small funds of the little patriots by forming them into clubs, headed by a trustee, in order to accumulate funds for the purchase of certificates.⁴⁹ In the extremity to which Congress was reduced in 1781 he returned to the fundamental principle of borrowing, since the states would not or could not produce their quotas of money. And this time he suggested ultimate means of repaying the debt. His plan was to pay current expenses by interest-bearing certificates carrying promise of redemption in specie. The United States should have power to levy a

⁴⁷ *Ibid.*, VI, 19-22.

⁴⁸ *Ibid.*, VI, 53.

⁴⁹ Thomas to John Dickinson, July 20 (?), 1779. Niles, *Principles and Acts of the Revolution*, pp. 252-253. Niles says the letter was addressed to Caesar; it seems clear that it was to Dickinson.

THOMAS RODNEY

tariff to provide for redemption of the certificates. The war should be financed by long-term borrowing, the interest to be paid by a land tax of a penny an acre.⁵⁰ It is not assumed that these ideas were original with Rodney, nor is it known whether he proposed them publicly. His interest in the question, however, led to his appointment to a committee of five on ways and means (May 8). This committee reported on May 22, but Rodney did not sign the report. Probably he was absent. The report rather lamely proposed drawing drafts on the states at one month's sight, the states further to be apprised that all calculations had been made in solid coin. In addition, the states were to be recommended to repeal laws making the paper money legal tender.⁵¹ That effort to do the impossible was abandoned. Rodney said he had suggested the last of these recommendations on March 9.⁵²

One of Thomas Rodney's more staggering claims, that he was the "originator of the departments of administration in the old Congress," will have to be disallowed. "I Prevailed," he said, "on having the business of Congress assigned to Ministers and officers."⁵³ As Burnett pointed out, this work was for the most part done before Rodney arrived at Congress.⁵⁴ It is interesting that Rodney could see that the creation of the departments was significant enough to be meritorious; it would be more interesting to know whether there was a germ out of which grew such a whopper in Thomas's mind.

Whopper, did we say? A mere minnow compared to the tale of Rodney's conference with General Horatio Gates—toward the end of April, 1781, it must have been. He and that intriguing soldier were dining in a goodly company at President Huntington's table. They remained at the table after the rest had arisen, and, as representatives of the military and civil arms of the state, put their heads together on the problem of what government the colonies should have after the peace. Rodney thought, a government as near like the British government as fitted American conditions. Gates inquired how such a government could be effected. Rodney replied, by a senate representing the states and a commons representing the people. How make an executive?

⁵⁰ Rodney's Journal, April 13, 1781, quoted in Burnett, *Letters*, VI, 54-55.

⁵¹ Library of Congress, *Journals of the Continental Congress, 1774-1789* (34 vols.; Washington, 1904-1937), XX, 485, 523; Edmund Cody Burnett, *The Continental Congress* (New York, 1941), p. 515.

⁵² Burnett, *Letters*, VI, 17.

⁵³ Claim often repeated. Twice in Rodney's Journal of Accounts, 1774-1799, in Div. of MSS, Library of Congress. Another quoted in Burnett, *Letters*, VI, 63.

⁵⁴ There is no mention of Rodney in Jennings B. Sanders, *Evolution of Executive Departments of the Continental Congress* (Chapel Hill, 1935). See Burnett, *Continental Congress*, pp. 489-492.

ANGLO-AMERICAN LAW ON THE FRONTIER

Elected by the people, said Rodney, who then proposed "the plan and association" of the officers of the army, the Society of the Cincinnati, whose function it would be to preserve the union and effect the plan of government.⁵⁵ They wanted a strong government. Rodney, who frequently stated his preference for the executive veto—possibly from his observation of the weak executive in Delaware—thought afterwards he recalled that the conference proposed an absolute veto by the president, and the appointment by him of state governors, who should also have a veto over their legislatures. In 1800 Alexander Hamilton was accused of having advocated these measures. Not so—Rodney and Gates planned them to make the country strong, and the plan prevented Hamilton from trying to have the army proclaim Washington king.⁵⁶ Thus Thomas could boast, when the Federal government seemed to work: ". . . I have always Stood On the Democratic floor, Yet am Equally attached to the Presidential and Senatorial Order of Our Government & How can I be Otherwise Since its Form In Toto—Eminated from my own mind."⁵⁷

The last of Rodney's major claims for the period of his services in Congress was that he secured the addition of Benjamin Franklin to the commission to treat of peace with Great Britain. John Adams had been appointed before Rodney came up to Congress, and it had been determined to join two more persons with him, of whom John Jay was elected on June 13.⁵⁸ In the voting for the third man, according to Rodney, the vote, with seven necessary for election, ran: Jefferson—5 (Massachusetts, Connecticut, New Jersey, Virginia, and North Carolina); Franklin—4 (New Hampshire, Delaware, Maryland, Pennsylvania); and Henry Laurens—1 (presumably South Carolina). McKean, Rodney's colleague, wanted to give in and vote for Jefferson, and if absent Georgia should return in time for the voting on the fourteenth of June and should vote for Jefferson, he would carry. But Rodney was obdurate, and finally proposed a compromise to Virginia and Pennsylvania: raise the number of the commission to four, and elect both Jefferson and Franklin. This was agreed to and the fourteenth was appointed for the day of voting.

⁵⁵ "Proceedings in Congress, 1781 &c" (above probably written about 1796), quoted in Burnett, *Letters*, VI, 145; Rodney's Journal, entry June 13, 1799, in Hist. Soc. of Del.; Journal of Accounts, 1774-1799, entry July 5, 1800, in Div. of MSS, Library of Congress.

⁵⁶ Rodney's Journal, entry July 22, 1800, in Hist. Soc. of Del.

⁵⁷ Rodney's Journal of Accounts, 1774-1799 (entry date not recorded, but certainly late 1790's), in Div. of MSS, Library of Congress.

⁵⁸ Burnett, *Continental Congress*, p. 520.

THOMAS RODNEY

For once we have in this tale a contemporary record from Thomas's hand, in a letter to Caesar on June 14, the day of the vote.⁵⁹ Relieved here of the burden of explaining the wild labyrinths which had by the 1790's grown out on all sides from Thomas's exploits, we are inclined to attribute some truth to his account, especially in the absence of any other version of this important election.⁶⁰ The journal of Congress merely indicates that Henry Laurens was unexpectedly added on June 14. On motion of William Sharpe, seconded by McKean, two more persons, making four in all, were to be added. Theodorick Bland nominated Laurens. He, Franklin, and Jefferson were elected⁶¹ (making five in all).

From time to time Rodney made other claims for his deeds in Congress, none of which will be here examined: that he prevented Congress from directing Washington's actions when Cornwallis was laying waste to Virginia;⁶² that he had "prevailed in gitting Mr. Robert Morris financier"; that he was responsible for McKean's election as president of the United States in Congress; and more besides. The late E. C. Burnett viewed all the claims with a jaundiced eye.⁶³

⁵⁹ Ryden, *Letters . . . Caesar Rodney*, pp. 413-414.

⁶⁰ Of course Rodney afterwards made a very good thing indeed of his statesman-like maneuverings. He once wrote to Franklin in the tone of a good rough hind, from Ionia Farm, that he had made him a commissioner and Franklin ought to come down and visit him and share his bucolic pleasures (about 1790, draft in Hist. Soc. of Del., no proof of dispatch. There are one or two "philosophical" letters drafted to Franklin in the same collection). A circumstantial account of this incident is found in *Journal*, entry of Jan. 31, 1797 (Hist. Soc. of Penna.). It adds to the contemporary story that Rodney, through his influence with Richard Howly, a delegate from Georgia, brought that state over from hostility to Franklin but he contradicts his contemporary story on the vote, probably here confusing June 13 and June 14. He adds that everyone applauded his firmness in standing out for Franklin. Even Sam Adams, the leader (with John Adams and Hancock) of the Eastern interest, crossed the room and warmly congratulated him. Burnett, *Letters*, VI, xlvi, says Sam Adams is thought to have left before May 8, 1781.

⁶¹ *Journals Continental Congress*, XX, 648.

⁶² Draft to Washington, Dover, Feb. 14, 1794, in Hist. Soc. of Del.

⁶³ Burnett, *Letters*, VI, 143-144. Rodney gave a sensible vote on July 7, 1781, for centralized conduct of the war. He favored the disposition of a stock of arms in South Carolina at the will of the commander of the Southern Department of the Army rather than at the will of the South Carolina militia. *Journals Continental Congress*, XX, 730-731.

ANGLO-AMERICAN LAW ON THE FRONTIER

III. *Decaying Officeholder and Philosopher, 1783-1802*

As 1781 drew to a close, a case arose in the Admiralty Court, of which Thomas Rodney was judge, to which he attached a significant train of consequences. The facts seem to be as follows: Pursuant to resolutions of Congress in 1775 and 1776, the Delaware constitution of 1776 provided for an admiralty court, without, however, mentioning a recommendation of the Congress that trials in that court should be by jury. Instead it merely said that all the common and so much of the statute law of England as had hitherto been adopted in practice in Delaware should remain in force until altered by legislation. In May of 1778, however, the Delaware assembly passed an act providing that supplies loaded on board a vessel *within the state* with the intent of conveying the supplies to the enemy should be forfeited, and two justices of the peace in the county where the capture occurred might adjudge forfeiture and order sale. On January 8, 1780, Congress by resolution repealed its recommendations that admiralty trials be had by jury, and proposed instead that they should run according to the usage of nations.¹

In June of 1778 a vessel had been captured by Philip Barrett, who as libellant hired Richard Bassett and George Read as proctors. In view of the act of the legislature a month previously, Rodney hesitated to receive the libel, and suggested trial under two justices. He was overborne by the prominent proctors, who assured him, as members of the legislature that had passed the act, they knew it was intended only for small-fry cases involving boats or canoes; justices could not be trusted with cases involving the law of nations.²

In December, 1781, William Brown of Dover and John Brinckle of Little Creek purchased the brig "Endeavor" at Lewes, brought her into Duck Creek, and loaded her with grain and flour. They had sent to New York for a passport from the British, and a British privateer was waiting at the mouth of the creek to "capture" the brig and escort it to New York. As the brig slipped down the creek it was captured by Colonel Charles Pope and some militia. Gunning Bedford, Jr.,³ as proctor, asked Rodney to condemn the "Endeavor" and cargo. Rodney said he even yet thought it might have been referred to the justices,

¹ *W. B. Surviving Partner, &c. v. Latimer*, Delaware Court of Errors and Appeals, 4 Dallas 2-3. Letter from Rodney to *Delaware Gazette*, draft in Hist. Soc. of Del.

² *Ibid.*

³ Attorney general of Delaware, 1784-1789; United States district judge, 1789-1812.

THOMAS RODNEY

since admiralty law was suspect among the people, but again his scruples were removed.⁴ The vessel and cargo were condemned as lawful prize and George Latimer, as marshal for the Court of Admiralty, took possession.

What then happened is not too clear, except that the case was removed into the courts of common law. We shall presently see Rodney's version of the deeper meaning of this event. Early in February of 1782, Rodney, then in Wilmington, received a writ of prohibition, presumably signed by the chief justice of the Supreme Court. Rodney thought it irregular to issue such a writ out of term time, and he felt the action would "licence a general Trade to New York," but knowing the court when it sat would follow the Chief Justice, he determined to save trouble by yielding. He advised Latimer to deliver the brig to the libelants and to suggest that they apply to two magistrates as the act of assembly directed.⁵

It appears by the decision on this case in the Court of Appeals that Brown and Brinckle won in the Court of Common Pleas of Kent County two actions against Latimer and his agents, one of replevin and one for trover; this does not seem quite right. At any rate the Common Pleas found that the Admiralty Court had no jurisdiction, the seizure having been within the body of the county, and the trial should have been before a court of common law. This judgment was appealed to the Supreme Court, which reversed the county court, and thence to the Court of Errors and Appeals. John Dickinson⁶ handed down the opinion, and later added full reasoning, at the September Term, 1788. Rodney's jurisdiction was completely upheld, and all contentions of Brown were denied. The Common Pleas was ridiculed for claiming jurisdiction either under the law of prize or under any statutes of Delaware.⁷

Rodney had the satisfaction of reading Dickinson's decision in a newspaper in 1789.⁸ But his gratification was marred by an unneces-

⁴ Circumstances from printed case in 4 Dallas and an undated memo in Hist. Soc. of Del. Rodney's attitude from letter to editor of the *Delaware Gazette*.

⁵ Thomas to Caesar, Wilmington, Feb. 9, 1782. Ryden, *Letters . . . Caesar Rodney*, p. 433.

⁶ Note that the *Dictionary of American Biography* errs when it states (V, 299-301) that Dickinson held no public office after the Federal Convention. The assembly elected him to this court on Feb. 2, 1788; his resignation was accepted Oct. 24, 1791. *Minutes Council*, pp. 1114, 1210.

⁷ *W[illiam] B[rown] surviving partner [of John Brinckle] Appellant v. [George] Latimer, Respondent*. 4 Dallas (1807), 1. Dallas says he was presented with this report by Dickinson.

⁸ *Delaware Gazette*, Feb. 14 and 21, 1789, where it occupied the front page for both numbers.

sarily cruel thrust by Mr. Justice Dickinson. Either merely answering something in the appellant's allegations, or perhaps even lending the accusation some personal sanction, the judge used the expression: "Admitting the government of a free state to be so degraded, that the 'judge of the admiralty appointed by the joint ballots of the president and general assembly,' as he is in this state, wants the integrity and knowledge he ought to possess. . . ."

By 1789 Thomas was never very far from ink and paper. He seized his pen. It is of particular point for this work that one of his answers gave a catalogue of his reading. Before his appointment to the Admiralty Court, he said, he had read Grotius, Puffendorf, Locke, and Montesquieu; "also the Sea Laws of Rhodes, Oleron and Whisby." On the common and statute law, among many other respectable authorities, he had consumed Coke on Littleton, Hale, Burrows, and Blackstone. He had perused Hume's and Smollett's histories of England and some authorities on the civil and ecclesiastical law. After the appointment he took up Vattel, and Lee on Captures.⁹ By 1789 at least he had extracted the celebrated answer by Paul, Lee, Ryder, and Murray to the memorial of the King of Prussia (1754), a lucid masterpiece in prize law.¹⁰

But the deeper significance of the cause of the brig "Endeavor," and of the noise that it engendered, was political—according to Thomas Rodney.¹¹ The outraged owners of the brig, their friends and relatives, and the enemies of the Rodneys, especially the Tories, raised against the admiralty procedure and its civil law the charge of tyranny, with the old battle cry of trial by jury. The shrewder ones of the opposition saw the opportunity for a deeper plot: to seize on the incident to break the alliance of the Rodneys and the Presbyterians, a union that had made the Revolution in Delaware.

The manner of accomplishing the split was to enlist Chief Justice Killen of the Supreme Court, whom Rodney was later to call the "orical" of the Presbyterian party.¹² As a matter of fact, it is curious that Killen was chief justice at all. We last met him associated in radical politics with Haslet and Rodney. Yet he was named chief

⁹ Draft, letter to editor of the *Delaware Gazette*.

¹⁰ Draft of another document, probably having the same purpose.

¹¹ Here let it be said that whereas in the story of the 1770's the writer tried to figure out what happened in Kent County politics, and takes full responsibility for the story, for the late 1780's and the 1790's he merely reflects Rodney's prejudiced and erratic views, and sets down these views for what they are worth. Rodney was by then no political force at all, but a sour onlooker, and his interpretation is presented for the sole purpose of reflecting his mind.

¹² Notes on a conversation, June 15, 1789, with Killen, in Hist. Soc. of Del.

THOMAS RODNEY

justice in July, 1777, under the regime that had defeated his party. The safest conclusion would be that much information remains to be gathered on Delaware politics and politicians. Killen seems to have been a cautious,¹³ solemn¹⁴ individual, with some tendencies to timidity and vacillation. Faced in his judicial office with the numerous suits for trading with the enemy and other disloyalties, he confessed to "both a want of knowledge and firmness of mind—the latter most." After all, of what offense was a man guilty who, apprehended with supplies on the way to the enemy, acknowledged the fact? He let the Tories off easy, and lived in fear that some night the bully boys from British ships might invade Dover.¹⁵ Munroe says the conservatives tried to elect Killen president in 1783.¹⁶ Assuredly there had been some kind of factional change or bargain in the chief justice's life.

As Rodney tells it, Killen was enlisted against him and the admiralty by a group headed by Bassett and Read (who had argued for admiralty jurisdiction in Barrett's case) and Benjamin Chew (chief justice of Pennsylvania until he was imprisoned as a Loyalist in 1777) and Edward Tilghman (a member of the early Congresses from Maryland)—presumably lawyers for the libeled brig. Playing on Killen's vanity and his jealousy of the Rodneys they bagged him, and he put himself at the head of the clamor against the admiralty. Many "Whigs" joined in this clamor "with more Zeal than they served the Revolution."¹⁷ Hereafter, in alliance with the Tories, a wing of the Whigs and Presbyterians sniped at Thomas, beginning by berating him for his charity to the victims of mob violence and of judgment-by-committee in 1776, and for his leniency in opposing the use of the militia against returning refugees in 1783,¹⁸ and ending by encompassing his ruin. Thus ran Rodney, in his most unreliable days. Of course since there were no parties, the shifting of personal loyalties

¹³ Haslet to Caesar Rodney (May, 1776). Ryden, *Letters . . . Caesar Rodney*, p. 87.

¹⁴ Same to same, Lewes, July 6, 1776. *Ibid.*, p. 96.

¹⁵ Killen to George Read, Aug. 9, 1777, quoted by Hancock, *Delaware Loyalists*, pp. 24-25.

¹⁶ Reed, *Delaware*, I, 117.

¹⁷ Most of the above account comes from a letter to "Dear Sir," doubtless 1789, inspired by the election of Bassett and Read as Delaware's first senators. Among many other documents in which this accusation is found is "The Benjamite," by Rodney, which he was inspired to write in Oct., 1788, by reading Tilton's *Dionysius*: "This goes further, to strike at the great chief himself," who owned part of the contents of the brig and really stirred up the row over the admiralty court. "The Benjamite," "the great chief," was probably Benjamin Chew.

¹⁸ On this last matter see Hancock, *Delaware Loyalists*, pp. 41-42, which does not mention Rodney.

ANGLO-AMERICAN LAW ON THE FRONTIER

and of hues of opinion cannot be described by mere labels, and we cannot use the words "Whig" and "Tory" with the certainty Rodney permitted himself.

The admiralty job lasted until the spring of 1785. The fat fees of the register and recorder for the Common Pleas and Orphans' Court of Kent Rodney managed to cling to for a few years longer. Caesar, indeed, in his last months as governor, thinking Thomas was launched on a mercantile career in Wilmington, tried to get him to give up his offices. Caesar could then install one of the deserving—Simon Wilson, husband of his half-sister, to be specific—but Thomas fortunately could not bring himself to relinquish the profits. He had deputized the work to Nehemiah Tilton,¹⁹ and accordingly had the offices to return to when he left Wilmington. The terms of the jobs were not supposed to exceed five years, so that Rodney was lucky enough, having ridden out John Dickinson's short term, to find in office a Whig president, Nicholas Van Dyke, in 1783, and thus to secure a renewal of his commissions.²⁰ Rodney seems to have been indisposed to do the actual clerical work. In 1786 he agreed to pay Simon Wilson £50 a year to do "all the business" of his offices.²¹

Thomas had more responsibility than ever before in his life. Mrs. Rodney died October 31, 1783, leaving him with two children at the age of puberty. Caesar's terrible disease finally conquered him less than a year later. He died on June 26, 1784, at the age at which Julius Caesar had died 1828 years before.²² The meaning of this Delphic utterance will transpire. Caesar left most of his real estate to Thomas's son Caesar Augustus, and Thomas was named executor of the estate.²³ Thomas had never carried a heavy burden without the help of his able brother. It would appear that he could not carry that load now bequeathed him. He moved to Poplar Grove, Caesar's residence at the time of his death, and lived there until 1791, boarding his children at Sally Wilson's or John Vining's when they were not away at school.²⁴ Thomas McKean seems to have taken young

¹⁹ Thomas to Caesar, Wilmington, Oct. 19, 1781. Ryden, *Letters . . . Caesar Rodney*, pp. 428-429. The indexer of this work put the Tilton of the letter down as Dr. James, who, however, was at this time a surgeon in the army. Nehemiah is the writer's guess.

²⁰ This statement is an inference. I found no document except a commission as Clerk of the Orphan's Court, signed by Van Dyke Sept. 18, 1783, in Hist. Soc. of Del.

²¹ Agreement, Jan. 6, 1786. In Hist. Soc. of Del.

²² Rodney, Journal of Accounts, 1774-1799, in Div. of MSS, Library of Congress.

²³ Ryden, *Letters . . . Caesar Rodney*, p. 447.

²⁴ Rodney's Journal of Accounts, 1774-1799, in Div. of MSS, Library of Congress, contains much information on the expenses of the children in this period.

THOMAS RODNEY

Caesar into his home while he attended the University of Pennsylvania.

On April 8, 1784, Rodney was again elected to Congress, in a mixed bag of delegates, mostly conservative.²⁵ Rodney did not attend under this mandate, thereby missing an opportunity to vote on the parent of the great Northwest Ordinance and an abortive plan for disposing of the Western lands. As if his election in company with conservatives was not sufficiently confusing, in October he failed of election despite his having been nominated for Congress in a freshly elected radical assembly.²⁶ Perhaps his theory that he was deserted by some of the Whigs had some foundation, although, as Munroe points out, the elections to Congress are not the best indices to any alignments, since the main task was to find someone who would attend.

In 1785 the old Whig or radical element won the election again, although Sussex, the most Tory of the counties, went Tory for the first time since 1777. The explanation lies in the loyalty oath required of voters, plus intimidation by the Whigs. Those opposed to the Revolution had simply been prevented from voting. Now the conservatives came back to the polls and the dominance of the Scotch-Irish Presbyterians and radicals was about over.²⁷ By this still Whig-gish assembly, however, Rodney was again elected to Congress (November 4), along with Vining, Bedford, Jr., William Peery, and John Patten.²⁸ Peery was a good Revolutionist from Sussex and Patten a representative of the radical Whig wing that would soon turn into the Franco-Republican-Democratic party—the wild men—of which Dr. James Tilton was another leader. Patten was a brother-in-law of Joseph and Edward Miller,²⁹ radical Kent politicians who were sons of a radical preacher. With the inception of this party Rodney had nothing to do.

Five men were elected to Congress in the vain hope of having two in constant attendance. Only Rodney and Patten deigned to drop

²⁵ *Minutes Council*, p. 873. Elected with him were John Vining, John McKinly, and Henry Latimer; the first two were certainly not ardent Whigs. John A. Munroe, "Relations between the Continental Congress and the Delaware Legislature, 1776-1789" (Master's thesis, University of Delaware, 1941), p. 71.

²⁶ *Minutes Council* (Oct. 26, 1784), p. 879; Munroe, "Relations," p. 73.

²⁷ Munroe in Reed, *Delaware*, I, 118.

²⁸ *Votes and Proceedings of the House of Assembly of the Delaware State, commenced at Dover on Thursday the twentieth Day of October, in the Year of Our Lord, One Thousand Seven Hundred and Eighty-five* (Wilmington, n.d.), p. 16. The delegates were allowed 40s. per diem for attendance, and a like amount for traveling expenses.

²⁹ Munroe in Reed, *Delaware*, I, 132.

in on the national legislature at all, and they are credited with attendance only from May 2 to 19.³⁰ The chief matter before Congress in this month was the debate over Connecticut's cession of Western land claims, out of which she got the Western Reserve.³¹ It may be, however, that Rodney was present on June 20 also. There is extant a document of that date headed "Propositions in Congress . . . by Thomas Rodney." His proposal had to do with the mechanics of speeding up survey and sales of the public lands under the ordinance of 1785.³² Thomas later recalled that at this session Gardoqui offered him a principality on the Mississippi, as has been mentioned, out of gratitude for his shipping flour to the Spanish fleet; and that William Blount tried to give him 20,000 acres of Tennessee lands.³³

The Western lands seem to be the motif of Rodney's brief attendance at the Congress of 1786. In view of his later residence in the West, and of what has been written about the speculative interests in Western lands of various delegates to Congress from time to time, it might be well to say that Thomas's papers do not indicate that he had any interest whatever in the West until he was sent there. He did have an abiding and strong interest in the Western lands, and recurs to it frequently. It was a simple and sensible interest: those lands ought to belong to the Confederation, so that they could be sold to pay the costs of the Confederation, so that Delaware would not have the heavy burden of grants for its support.

The politics of 1786, or what little the writer knows of them, have for Rodney some interesting implications. This seems to be the year meant by Tilton when he says that the villain of his piece, George Read, invaded Kent successfully by raising a cry against the Presbyterians.³⁴ Munroe says that in this election as a whole "the more conservative faction won control of the lower house."³⁵ It is odd therefore to find Rodney returned to the assembly from Kent. (The lower house passed a stay of executions law on Rodney's motion, but the council refused to agree.)³⁶ But the election for Congress held in

³⁰ Burnett, *Letters*, VIII, lxxxv.

³¹ Rodney took notes on the debates on this subject on Thursday, May 18, which are in the Hist. Soc. of Del. They do not appear in Burnett's *Letters*.

³² In Hist. Soc. of Del. Rodney could, of course, have drawn up the propositions without being present in Congress.

³³ Rodney's Journal, July 9, 1797, in Hist. Soc. of Del.

³⁴ Timoleon, *Dionysius*, p. 58.

³⁵ Reed, *Delaware*, I, 118.

³⁶ *Votes and Proceedings of the House of Assembly of the Delaware State, at a Session Commenced at Dover, on Friday, the Twentieth Day of October, in the Year of Our Lord One Thousand Seven Hundred and Eighty-Six* (Wilmington, 1786), pp. 3, 4, 6-7, 9.

THOMAS RODNEY

this short session is even more curious. Patten, Peery, Van Dyke, Carty, and John Jones, all of them good Revolutionists, were nominated but not elected. Nathaniel Mitchell, who next year, it was to be reputed, would take Sussex by force for the conservatives, heading armed bands "cursing all Irishmen and Presbyterians," was elected.³⁷ Chosen too was Gunning Bedford, Sr., who was married to George Read's sister;³⁸ he was nominated by one Thomas Rodney. And Thomas himself was elected with this conservative pair;³⁹ he seems now to have been divorced from the old radicals.

Rodney did not attend Congress under this election; he declined to go until some pay was advanced him.⁴⁰

He was not yet at the end of the confidence and honors bestowed on him by the electorate. In the October elections, 1787, he was returned from Kent (which this time went Whig)⁴¹ to another "conservative"⁴² assembly, of which he was unanimously elected speaker, a high office in which his brother had exercised great power. Ten days later he was ill and absent for two days and on November 8 he resigned the chair and asked for leave. But on the tenth he was back participating in the debate.⁴³ This was the assembly for which the elections in Sussex were first disrupted by violence on the part of the Whigs, and then captured by armed bands of Tories. Rodney voted with the minority against confirming the elections of the conservatives returned from that county.⁴⁴

The minutes of the council record that on the day Thomas returned to the legislature after his brief illness, he was elected once more to the Congress.⁴⁵ But Isaac Grantham appears in later records in place of Thomas.⁴⁶ Perhaps he declined the election, but he was probably present and could have withdrawn his name before the vote. Perhaps he resigned. At any rate these antics in November are in-

³⁷ Munroe in Reed, *Delaware*, I, 119.

³⁸ *Dictionary of American Biography*, II, 122-123.

³⁹ Rodney was nominated by one Gordon, possibly his brother-in-law Joshua. *Minutes Council*, Oct. 26 and 27, pp. 1002, 1004, for the nominations and elections.

⁴⁰ Rodney to the president of Delaware (Tom Collins), May 6, 1787. Burnett, *Letters*, VIII, 594.

⁴¹ Timoleon, *Dionysius*, p. 66.

⁴² Munroe in Reed, *Delaware*, I, 118.

⁴³ *Votes and Proceedings of the House of Assembly of the Delaware State, At an adjourned Session Commenced at Dover on Monday, the twenty-seventh Day of August in the Year of Our Lord One Thousand Seven Hundred and Eighty-Seven and of a new house sitting October 20*, p. 1 (elected speaker Oct. 24), pp. 14, 20, 21.

⁴⁴ Munroe in Reed, *Delaware*, I, 119; Rodney to Jacob Broom, Poplar Grove, Jan. 27, 1788, in Hist. Soc. of Del.

⁴⁵ Nov. 10, *Minutes Council*, p. 1086.

⁴⁶ Munroe in Reed, *Delaware*, I, 119.

ANGLO-AMERICAN LAW ON THE FRONTIER

explicable. Did Rodney funk the speakership and develop a psychological illness? Was he already worried about the financial ruin that was to descend upon him?

The blows were about to fall from all directions. The time for reappointment to his lucrative clerical jobs was approaching. Thomas pulled what wires he could, and asked for reappointment,⁴⁷ but the blow fell about October 1, 1788, when the president, Tom Collins, and the Privy Council removed him from his clerkship and the office of register, and appointed Francis Manny, former Revolutionist of Kent. The President and Eleazer McComb stood out for Rodney; James Sykes, John Ralston, and Allan McLane for Manny.⁴⁸

The writer does not pretend to understand, from the scraps of information he has seen, what produced Rodney's ruin. He has made no effort to assemble a coherent accounting and he would be unfit to audit the books if he had seen the accounts of Rodney's executorship of Caesar Rodney's estate, which are in private hands. Caesar had had a very fine estate indeed at the opening of the Revolution. One suspects it suffered from the times and from the inattention incident to Caesar's long public service. The destruction of the currency in the 1780's cannot have done any good, and Thomas, alas, was no businessman.

One gathers that the crux of the situation, as it seemed to Thomas, had to do with the Kent County Loan Office, of which Caesar was cotrustee with his foster step-brother, John Vining, and then, on Vining's death, sole officer. Thomas thought that about £1500 was due Caesar's estate from Vining's. The state seized on that and demanded more. Whatever the facts, Thomas was not only bankrupt but in bad odor. His vain efforts, which persisted for fifteen years, to get the state to reopen its audit of the loan office first besmirched his half-brother-in-law and then reacted on Thomas. As early as June, 1788, Rodney petitioned for such re-examination of the accounts. In response to his memorial, the Joint Committee on Finance of the assembly looked into the loan office records. Instead of finding that monies were due Caesar's estate, the committee reported that Simon W. Wilson, the loan officer, held sums unaccounted for to the amount of more than £1000.⁴⁹

Persons were already spreading the accusation that Thomas had

⁴⁷ Memo on subject dated July 1, 1788; Rodney to the president and Privy Council, Poplar Grove, Sept. 28, 1788. Both in Hist. Soc. of Del.

⁴⁸ Simon W. Wilson to "My Dear Col.," n.d., in Hist. Soc. of Del. (Ralston will have to be added to Scharf's civil list as a councillor.)

⁴⁹ *Minutes Council*, pp. 1125, 1132, 1134, 1173, report of the committee at p. 1181.

THOMAS RODNEY

stolen money from the loan office. He had the humiliation of answering Jacob Broom, a manufacturer and a delegate to the Federal Convention, publicly on this point, and he dissociated himself from poor Wilson.⁵⁰ The state seems to have pressed officially the point that Caesar had swapped hard money from the loan chest for bills on France and Holland, and that Thomas must have them in his possession. Thomas was sure the money went to Congress for "the Canada expedition," and that only Continental obligations were returned to the chest. The state further insisted that the balance of the monies Caesar had held for Congress ought to be accounted for in specie.⁵¹

Whatever the cause of Rodney's woes, his creditors and those of Caesar's estate moved in on him in 1791. In March Poplar Grove, which had been Caesar's demesne place in his later years, was seized in a foreclosure, and on March 15 Thomas moved to Ionia Farm in Jones' Neck. Thomas had evidently borrowed money from his wife's people in Philadelphia—the Fishers of the great British bribe of 1776; on April 28 Thomas's personalty was taken in execution at the suit of Samuel Fisher and others. It included furniture, oxen, eighteen head of cattle, six horses, three Negroes, and the sloop *Iris*.⁵² On the thirteenth of June Rodney himself was taken on a writ of *capias ad satisfaciendum* and thrown into jail at Dover. There he remained for fourteen months, until August 30, 1792.⁵³ On July 4, 1791, an ironical date, the chief seat of the Rodneys in Delaware, Byfield, in Jones' Neck, was sold up. Byfield had come to the first Rodney by marriage. By the 1790's Thomas's great-grandfather's fine Grierson apple orchard was gone. Gone were his house and that of Thomas's father, along with the cherry-tree walk that formed an approach to the latter. Caesar had given over Byfield as a sort of dower place and neither he nor Thomas had lived there in many years. But it encompassed the family graveyard, and was planted with many memories.⁵⁴

Apparently Ionia Farm, also in the Neck, was saved from the wreckage of what Caesar had left young Caesar Augustus. When Thomas was released from jail he went back there and remained until the last month of 1793.⁵⁵ After that he lived with Caesar Augustus in Dover until the latter moved to Wilmington; for the re-

⁵⁰ Letter, Jan. 1, 1789, to *Delaware Gazette*, Jan. 10.

⁵¹ Rodney to . . . , May 18, 1791, in Hist. Soc. of Del.

⁵² List in Hist. Soc. of Del.

⁵³ Sketch by Simon Gratz, *Penna. Mag.*, XLIII (1919), 2.

⁵⁴ Journal, Jan. 23, 1797, in Hist. Soc. of Penna.

⁵⁵ Chronology by Rodney in "Commonplace Book 1773," in Hist. Soc. of Del.

ANGLO-AMERICAN LAW ON THE FRONTIER

mainder of the decade he seems to have had a room in the house of his half-sister Sally, on Dover Square.

The effects of the disaster on Rodney were natural ones. What seemed to him the fall of the house of Rodney coincided with the time when his life expectancy was about run out; he could look forward to nothing but a few more dishonored years. In 1794 he was fifty; his hair was quite white and his teeth were going fast. On the day after Christmas, 1799, his "last tooth but one came away."⁵⁶

Thomas's lively and ill-disciplined mind rejected the conclusion that he was crowning a mediocre life with failure born of his own shortcomings. It busied itself with a review of his life which turned up a host of rare, compensating achievements. It took flight from reality. With sometimes a good solid core of truth to work with, and sometimes a premise that was itself fanciful, Thomas created the more remarkable of the accomplishments which we have hitherto examined: the saving of the country in 1776, the inspiration of his brother to tip the balanced scales for independence, the planning of the Federal government, and so on.

There developed further the mysticism which must have alarmed or amused his contemporaries. He saw visions. He was divinely led. Of these facts the most remarkable manifestation was the appearance of the archangel which sent him to stop surrender negotiations and inspire the New Jersey offensive. But, he said in 1793, he was customarily divinely instructed and Caesar, knowing this, had always preferred Thomas's counsel to his own.⁵⁷ One addresses oneself to this phenomenon with sympathetic interest, only to find Rodney himself reduce it to absurdity: Not only Thomas, but his "Old Dog Harkwell" had visions, and "on many Occasions Seems to have received Prophetic knowledge So that I have Often Observed his direction in preference To my Own. . . ."⁵⁸

The exact time when visions began to appear to Rodney has significance. The author was not aware of this soon enough to collect all the data, so that he cannot be sure, but the first vision positively dated in the notes before him came in 1788. Caesar, "dressed in the blew cloak with red lining" that he wore to the Stamp Act Congress in 1765, appeared to Thomas one night and told him that Thomas was appointed "Calif" of Pennsylvania. Rodney had to look up the

⁵⁶ Rodney's Journal of Accounts, 1774-1799, entry Dec. 26, 1799, in Div. of MSS, Library of Congress.

⁵⁷ Thomas to the chief justice of Pennsylvania, Ionia Farm, May 15, 1793, draft in Hist. Soc. of Del.

⁵⁸ Rodney's Journal, *ca.* May 1, 1796, in Hist. Soc. of Del.

THOMAS RODNEY

word in Bailey's *Dictionary*.⁵⁹ On the other hand, the foundation for some of the visions was certainly old. When Rodney was twenty-five he already had a warm interest in his genealogy, and believed he was descended from Julius Caesar. He sometimes signed his diary J.T.R.—J for Julius—and he saddled his son with the name Caesar Augustus to keep some succession or other straight. Julius Caesar visited him in a dream at least once, and Thomas was confirmed in his genealogy because the Emperor strongly resembled him. The Emperor gave Thomas a picture of himself which an attendant spirit ordered him not to sell,⁶⁰ but it has not come to light among his papers.

Imagine, therefore, Rodney's distress when in 1796 he received the news of the birth of a second daughter to his only son. To add to his troubles and humiliations, the male Caesarian line seemed to be playing out. The Julian star was fading. Thomas, aged 52, determined to replenish its beam himself. Providence had "restored my youthful vigor again and divinely pointed out the person."⁶¹ (It might be said here that Thomas was thought in 1796-1797 to be courting Miss Nancy Ham,⁶² but he never married for a second time. There was more than a hint of the foxy grandpa about Rodney in the 1790's, and many of his dreams and poems were rather erotic.)

Not only did Rodney restore his wounded ego by dwelling on the great contributions and connections of his past, but he explained to himself his present sorry plight as the result of formidable and implacable persecution by enemies. The Tories and Quakers resented his integrity in resisting their blandishments and his success in effecting the Revolution. Animated by resentment of his moderation, and led by violent or jealous and designing men, many of the Whigs turned on him too. Thus his misfortunes were imposed upon him from without. The long letter of 1792 to McKean, so often cited here, is built around this theme. Or another sample: Delaware has been

long ruled and mislead by a faction that have Seemed determined To destroy the State . . . among these the Auditor & Commr. intrusted To Settle the State Accts. (E[leazer] McC[omb]) has been the most wicked and Diabolical—The object of this faction was to depress & destroy every

⁵⁹ Rodney's Journal of Accounts, 1774-1799, March 31, 1788, in Div. of MSS, Library of Congress.

⁶⁰ Rodney's Journal, Jan. 23, 1797, in Hist. Soc. of Penna.

⁶¹ Draft, "To my only Son," May 2, 1796, in Hist. Soc. of Del. Caesar Augustus sired fifteen children, five of whom were males. Anna Wharton Smith, *Genealogy of the Fisher Family 1682 to 1896* (Philadelphia, 1896).

⁶² Rodney's Journal, especially entry Feb. 5, 1797, in Hist. Soc. of Penna.

ANGLO-AMERICAN LAW ON THE FRONTIER

friend to the Revolution except those who sided with them—all accounts and Expenditures in the War, therefore were rejected that was possible by any means whatsoever—

. . . This faction have been . . . accumulating vast fortunes Themselves—For this purpose The violent opponents in Party, Killen, Bedford, Tiltons, Millers, McCom[b] &c. &c. leagued with the lead. Tories—Thus composing a Dark iniquitous & ruinous faction under the Auspices of J. D. & B. C.⁶³

The persecutors even seduced Rodney's own children (thought Rodney). Caesar Augustus's marriage, in 1793, to Susan, daughter of Captain John Hunn, did not seem to Thomas advantageous enough, and he saw in it a plot. Lavinia married, without asking his permission or attendance, John Fisher, a member of the now hated clan of her mother. This was due to the machinations of Miers Fisher, who had tried to bribe Thomas.⁶⁴ He fancied neglect by the children, and indeed Rodney must have been a bore at that time. Caesar avoided him; the faction were trying to alienate him from his father and he had "not Sense or Virtue enough to avoid it."⁶⁵

The very Negroes became party to the harassment. Since Rodney's attitude toward Negroes was of some importance when, later on, they pressed suits in his court, his attitude toward them in the 1790's must be looked into. He later shed crocodile tears at his inability to free some Negroes,⁶⁶ protesting that he was a great democrat and Revolutionist, and that he and his brother had set free many slaves. One fact is that it was his brother's will that provided for gradual emancipation of his servants. Another fact is that Rodney did not believe in freeing the slaves. In 1789, when he was in the assembly, he fought vigorously some kind of emancipation act.⁶⁷ He supported slavery principally on the authority of the Bible, even as did later Southern apologists. "I spoke warmly on this occasion & was not willing To Sacrifice the happiness of the whole Community To the Immediate freedom of the Negroes."⁶⁸

There is in the Historical Society of Delaware a piece in Rodney's

⁶³ Obviously John Dickinson, and the only possible name to fit the other initials is Benjamin Chew, the Loyalist chief justice of Pennsylvania. Rodney's Journal, Jan. 18, 1797, in Hist. Soc. of Penna.

⁶⁴ "Commonplace Book 1773," in Hist. Soc. of Del.

⁶⁵ Journal, Jan. 25, 1797, in Hist. Soc. of Penna.

⁶⁶ See especially the case of Sue, below.

⁶⁷ This may have been a bill, which passed, making manumission easier. See Reed, *Delaware*, II, 575.

⁶⁸ A memorandum in Hist. Soc. of Del. "All the Assembly Agreed with me Except Bassett Bedford & Broom," Rodney went on. "Their Conduct was vile—"

hand developing the thesis that God made the Negro for his position as a hewer of wood and a drawer of water, with the implication that he is fit for nothing else. In September, 1790, he wrote to Thomas Jefferson agreeing with the view of the latter that white, red, and black people are different species.⁶⁹ The multiple origin of man is a theory frequently supported in Thomas's papers.

In Rodney's mind in the 1790's the Negroes grew more and more impudent, stirred up by the Tory Quakers and the low-life Methodists. Freed slaves would inevitably destroy and plunder, and they could not safely be emancipated unless they were colonized abroad.⁷⁰ Encouraged by the abolitionists, the Negroes of Dover became increasingly wicked and insolent, Rodney thought, and they were finally set upon Rodney especially, presumably because he was not an abolitionist, and because the Quakers were anxious to attack their old enemy. Seized with the idea that the Negroes were leering at him, or personally slighting him, Rodney twice attacked and caned servants who apparently did not even know he was around.⁷¹ Although psychiatric diagnoses of people long dead are notoriously foolish, it is permissible to point out that Rodney's frame of mind in the 1790's was paranoiac.

With nothing else to do, he found time to read a great deal and to write more. He had begun to read as a youth, "to learn my duty to God and man."⁷² Plutarch, Dryden, and a life of Peter the Great he read in September, 1769.⁷³ We have heard his claims of legal reading; in 1797 he "looked a while" into Hale's *History of the Common Law* for the first time in thirty years.⁷⁴ Personal reasons—Rodney was usually subjective in his approach to problems—led him to review, off and on for a decade, the common law on the inheritance of real property. He took the view that English common law prevailed in Delaware and therefore parents could not inherit from their children certain kinds of real estate. If he could maintain his position, the estate of his brother Billy (died 1787) would revert to him. It was this interest which led him in 1789 to attack a decision of the

⁶⁹ Draft in Hist. Soc. of Penna.

⁷⁰ Rodney's Journal, May 6, 1797, in Hist. Soc. of Del.

⁷¹ There is much of this in 1798-1800 entries in Rodney's Journal of Accounts, 1771-1775, in Div. of MSS, Library of Congress, among other places. Not all of this was pure imagination. The entry of May 7, 1798, in Rodney's Journal in Brown Univ. states: "The inhabitants of Town have by Genl. Consent Kept gard by Turns Every Night for Two Weeks Past on Acct. of the Insolence & Mischief Of the Negroes."

⁷² Autobiographical sketch in the Rodney genealogy, Hist. Soc. of Del.

⁷³ Munroe in Reed, *Delaware*, I, 93.

⁷⁴ Rodney's Journal, Jan. 7, 1797, in Hist. Soc. of Penna.

ANGLO-AMERICAN LAW ON THE FRONTIER

Delaware Court of Appeals,⁷⁵ and in 1802 to write a whole book (unpublished) on the common law of succession to estates addressed "To the Citizens of America."⁷⁶

Both his reading and his reactions to it are exemplified by a few notes from his diary, 1796-1797. In August, for a couple of mornings, he called on Horace for a "response," to meet the situation presented by the day. Horace did very well. On September 3 he felt impelled to defend the Bible, in part, against the second part of Paine's *Age of Reason*, which had just come to his hand. A few days later he read William Cobbett's strictures on the French Revolution. Sure it's bad and mad, thought Rodney. But a balanced view would take into account the state of things in France before 1789. Revolutions are no fun; ugly things occur. Rodney himself had been through "all the hell of Revolution," but the issue of it was better than what went before.⁷⁷ On New Year's day Rodney read some of Thomson's *Seasons*. A few days later he copied out of Gibbon's autobiography the portions relating to America. In the same week he read Mirabeau's orations. Good! He and Mirabeau both favored the power of veto by the executive. On a dull March Sunday he dully translated some French verses. Next day he fell on the travels of Brissot de Warville, with which he was not pleased. Brissot's warm enthusiasm for abolitionists and Quakers touched off an explosion in Rodney's notebook. The Quakers had been pro-British in the Revolution, and none was worse than Warner Mifflin⁷⁸ (a prominent Quaker leader, a pacifist in the Revolution, and an abolitionist). And so went Thomas's reading; we have given only a brief sample.

His writing, apart from his voluminous diary and letters to prominent people which he probably did not mail, was composed of letters to the editor, a form of self-expression in which Rodney overindulged. He was an advocate of the extremely literal interpretation of what would become one of America's traditional maxims in maritime law:

⁷⁵ *Robinson et al. v. Lessee of Adams*, 4 Dallas xiii. Rodney's strictures signed "Pericles" appeared in the *Delaware Gazette*, May 9 and May 16, 1789.

⁷⁶ MS in Hist. Soc. of Del. Caesar A. struggled to prevent his father from starting a suit on this issue. He told Thomas the lawyers were all against him on Billy's estate; Thomas said the juries would all be for him. Journal of Accounts, 1774-1799, Nov. 28, 1799, in Div. of MSS, Library of Congress.

⁷⁷ Rodney veered, 1793-1797, from Francophile enthusiasm (draft, May 7, 1793, to Citizen Minister Genêt) to an America-first, cold, noninterventionist policy (Rodney's Journal, May 24, 1797). Both in Hist. Soc. of Del. There are many comments on the French Revolution in his papers.

⁷⁸ Rodney's Journal, Aug. 27, 28; Sept. 3, 12; Jan. 1, 11, 6; March 19, 20, 1796-1797, in Hist. Soc. of Penna.

THOMAS RODNEY

free ships make free goods.⁷⁹ Ossian's poems, which he greatly admired, frequently engaged his attention. He set down a chronology of Grecian history. In 1791 he organized the Mosaic Law under heads. Under the pseudonym of "Hermes" he wrote an attack on Lord Camden's doctrine on libel trials. He left essays on the sibillancy of the English language, on the probability that Tyrean purple came from sea nettles, and on man's relation to the atmosphere.⁸⁰ He wrote a sketch of "Major General Charles Lee," who interested him—probably because he had met him. But worse than that, Rodney, averring that he had it from Lee himself, developed the thesis that Lee had written the letters of Junius, thus "solving" the most celebrated mystery of the eighteenth century. Needless to say, his solution did not hold up for long, but it created a commotion on two continents.⁸¹

On subjects then more strictly falling within the classification of "philosophy," Rodney had some ideas also. In his youth he had believed that the sun was inhabited,⁸² and he retained as an adult the theory that life was produced by the interaction of the sun as father and the earth as mother. He laid himself open to a rude attack by proceeding further with this idea. He was conversing in 1797 with A. Hamilton Rowan and with Dr. Luff, with whom he customarily stayed when he was in Wilmington. Rodney proved the animating power of the sun by revealing that he had frequently killed small creatures and then restored life to them by exposing them to the sun. Dr. Luff seems to have received this scientific revelation with skepticism. In fact, he was rude and arrogant; he scoffed.⁸³ Rodney, it must be said, went straight to the major mysteries for his philosophical excursions. He wrote to Jefferson on the old problem of the light engendered without heat by "lightning bugs," and made a proposal for utilizing it.⁸⁴ Amongst his other scientific accomplishments was the ability to make milk artificially.⁸⁵

Rodney wrote also vast quantities of verse. On this form of self-

⁷⁹ An essay on the subject proving it a law of nature; Rodney's Journal, Jan. 15, 1797, in Hist. Soc. of Penna.; Rodney's Journal, May 24, 1797, in Hist. Soc. of Del.

⁸⁰ All in Hist. Soc. of Del. The Mosaic Law is in "Commonplace Book, 1773."

⁸¹ Essay, and a big dossier of papers, including two letters to Andrew Marschall, editor of the (Natchez) *Mississippi Herald* (therefore after 1803), are in Hist. Soc. of Del. But the letter which was reprinted in England was dated Feb. 1, 1803, and appeared in a Wilmington paper. Jared Sparks, *Life of Charles Lee*, reprinted in New-York Historical Society, *Collections*, VII (1874; New York, 1875), pp. 234-235.

⁸² Rodney's Journal, 1769, in Hist. Soc. of Del.

⁸³ Rodney's Journal, Feb. 19, 1797, in Hist. Soc. of Penna.

⁸⁴ Draft, n.d., in Hist. Soc. of Del.

⁸⁵ Rodney's Journal, June 10, 1798, in Brown Univ.

ANGLO-AMERICAN LAW ON THE FRONTIER

expression he had ideas of his own, and set down an original theory of versification.⁸⁶ He attempted many forms of verse. To the untutored ear of this writer most of it sounds pretty bad. Perhaps over this aspect of his authorship it would be prudent, as Rodney would have written, "to draw the Vale."⁸⁷

Some of his poetry expressed religious feeling, and he was given to composing brief chants of adoration which he used as prayers. Rodney's religious feeling was a compromise between rationalistic deism and orthodoxy. Grandsons of an Episcopal clergyman, he and Caesar were possibly placed in an anomalous situation during the Revolution, for the Anglican clergy in Delaware were almost all foes of the patriots, and Church was synonymous with Tory. By the 1790's Thomas had firmly rejected the divinity of Christ and he once alleged that he had clung on to the superstition of "Idolizing the Prophet of Nazareth" until it was "Solemnly Condemned by the Messengers of the Most high God in December 1776—"⁸⁸ At one time he wrote up a declaration for the establishment of the "Universal Church," to be erected near "Rodney's Bridge over the Dover."⁸⁹ The church would ordain a preacher, but any member would be allowed to speak in meeting.⁹⁰ However, orthodox views or no, if he had left the fold, he had returned by 1786. In April of that year he was elected a vestryman of Christ Church, Dover,⁹¹ and in the late 1790's he was active in the vestry.

This small public duty is a reminder that however poverty-stricken he was, or however eccentric he seemed to the generation of the 1790's, Thomas Rodney could not be wholly disregarded in Dover. In 1798 he was elected president of the newly organized Agricultural Society;⁹² in 1799 he was made a trustee of Jones' School, conducted by Parson Johnson.⁹³

Lest the impression be given that Thomas was always fuzzy and visionary, or that his writing is so much mush, and also in order to reveal other aspects of his mind, let us introduce here two entries from his journals. One of them, an account of an audience with George Washington in Wilmington in 1790, demonstrates that Rodney could be an excellent reporter, combining brevity and economy

⁸⁶ Augustus H. Able III, in Reed, *Delaware*, II, 959.

⁸⁷ The Hist. Soc. of Del. and Brown Univ. have quantities of Rodney's verse.

⁸⁸ Rodney's Journal, May 11, 1797, in Hist. Soc. of Del.

⁸⁹ Doubtless St. Jones' Creek.

⁹⁰ "We the Subscribers . . .," n.d., in Hist. Soc. of Penna.

⁹¹ Scharf, *History of Delaware*, II, 1056.

⁹² June 16, Rodney's Journal, in Brown Univ.

⁹³ Rodney's Journal, July 23, 1800, in Hist. Soc. of Del.

THOMAS RODNEY

with a fully realistic atmosphere. The President, in answer to the conventional query, said he was restored to good health. How were the crops down Rodney's way? The President recalled that he had served with Caesar in the old Congress. Rodney "shuck hands" with him, and refused punch on the grounds that he did not take spirits. That is all: ponderous dulness on Washington's part, prudish timidity on Rodney's.⁹⁴

Exhibit B reveals a Rodney sharp, clear, and modern. In the Delaware House of Assembly in 1797 there was a vote on the question whether the tax assessors should be authorized to levy a tax on intangibles up to £1000. C. A. Rodney and Naudain, of New Castle; Raymond, Morris, and Souden, of Kent; Wells and another from Sussex voted yea. Dr. James Tilton, Maxwell, and Lewis of New Castle; Ridgely, Emerson, and Warner of Kent; and two Sussex men voted nay. Here is Rodney's comment:

The foregoing vote—Shews us how Interest rules men—The Estates of those who voted for the affirmative consist Chiefly of Real and Visible property, which are made the objects of Taxation—Those who voted in the negative Have their property Chiefly in the fund or on private Interest, particularly, Tilton, Maxwell, Lewis, & Ridgely—Thus money, the object best adapted to pay Taxes, goes untaxed—Like the late Priesthood of France it escapes Taxation by the influence of its ability To pay Taxes—Thus we See the Patriotism of our most Violent Democrats is the Same with that of the most Stanch Tories whenever interest is in Question. Tilton, Maxwell, & Lewis are violent Democrats—But the Patriotism of Such consists in reality only in the desire of gitting into power to Serve themselves.⁹⁵

Rodney viewed with distaste the Federalists, who put in office Tories and traitors, but he liked even less the crew that controlled the opposition. The former were the descendants of the old Court party, to which the Rodneys really belonged, but which they had deserted in 1774-1775. The Country party, to which they had adhered in

⁹⁴ "Thomas Rodneys Acct. book 1780-81 & 82 And Also his Journal July 25 to Augt. 15th 1796," in Div. of MSS, Library of Congress. Rodney did not even confide to his diary any recriminations or claims, although he had not seen Washington since Morristown, and might have expected some martial recognition. His attitude toward Washington in the 1790's was a mixture of respectful awe and petulant criticism—for not recognizing old patriots. One of his most outrageous claims to merit, in this period, was that he had been responsible for the election of Washington, in June of 1775, as commander-in-chief of the Continental forces instead of "The Prince of Brunswick" (Duke Ferdinand). This delusion of Rodney's seems completely disproved by the letter of Caesar to Thomas, Philadelphia, June 20, 1775, in Ryden, *Letters . . . Caesar Rodney*, p. 60.

⁹⁶ Rodney's Journal, Jan. 16, 1797, in Hist. Soc. of Penna.

the heat of the Revolution, had split at the end of the war. Its moderate wing had joined the Federalists. Its radical leaders, such as Tilton, were left unchecked in command of the party, which of course became the Democratic Republicans in Delaware. The reader will remember the French-British divisions which gave these parties something to talk about in the 1790's.

The division of the old Country party, Rodney thought, dated in part back to the case of the brig "Endeavor," as we have seen. He also blamed it on the violence and self-interest of Timoleon (Tilton).⁹⁶ The violence of the Irish Presbyterians seemed to Thomas the chief characteristic of the party in 1796. Among its leaders were Major John Patten, the representative in Congress (and the only man the Republicans could elect in the decade) and Joseph Miller. Patten was, sneered Rodney, the son of an Irish carriage maker. Miller was the son of a New England Presbyterian preacher.⁹⁷ Rodney now had pronounced and maybe not altogether ridiculous views on his old allies, the followers of Knox and Calvin: "The Presbeterians were generally opposed to Washington because they want a Presbyterian President—and most of them are in their heart Antifederal—because they prefer a government as they Say more Democratical but in fact more Aristocratical—for the Presbeterian Clergy are nearly all Aristocrats—"⁹⁸

Rodney held no brief for Jefferson—at least as far as he told his diary—an impractical philosopher, for one thing, when only a military man was fit to head a state. So Jefferson's election as president did not soften his view of the Democrats. They held a meeting in Kent in March of 1801 to nominate a governor. R. Cooper, "a counterfeiter and horse thief," was in the chair. Old memories swept over Rodney. These persons now Democrats had put up for sheriff William Brown—defendant in the celebrated admiralty cause (and therefore a traitor). They had helped ruin Rodney and Caesar's estate. Now in this meeting they first proposed for governor John Dickinson, who had opposed the Declaration of Independence. Surely Killen and Tilton were dictators of this policy. They preferred Tories to moderate Whigs.⁹⁹

It is odd to find Thomas at this late date fulminating against the Republicans. His son, like his patron and mentor McKean, had

⁹⁶ Thomas to Caesar Augustus, Poplar Grove, Jan. 10, 1789, in Div. of MSS, Library of Congress.

⁹⁷ Rodney's Journal, 1796, various entries, in Hist. Soc. of Del.

⁹⁸ Rodney's Journal, Aug. 24, 1796, in Hist. Soc. of Penna.

⁹⁹ Fragment journal, March 11 *et ante*, 1801, in Div. of MSS, Library of Congress.

THOMAS RODNEY

thrown in his fortune with the wild men. The party was in 1801 about to win one of its rare victories in Delaware, a circumstance which would rescue Thomas Rodney from oblivion and poverty, restore his self-respect, and set him on the road to the only real career he ever had—snatched from the grave, he was. Not Dickinson but David Hall of Sussex was nominated by the Republicans to run against Nathaniel Mitchell. "They have got a Jacobin President," someone wrote Rodney, "& if they git a Jacobin governor all is lost, there will be no more Security for person Liberty or property in this State. . . ." ¹⁰⁰

IV. *Pioneer, Land Commissioner, and Judge in the Southwest Borderlands, 1803-1811*

DELAWARE got a Jacobin governor, and Thomas came to life, dining in January of 1802 with Governor-elect Hall, being consulted and sought after. His son-in-law, John Fisher, was to get a job as secretary of Delaware. Rodney himself, so he says, was offered a seat on the Supreme Court, but he declined to take an inferior position among those who were children when he sat on the bench thirty years ago. Hall proposed a judgeship combined with a commission as major general, an offer which pleased Rodney, but nothing seems to have come of it. All Thomas really got at this stage was a commission (February 2, 1802) as *dedimus potestatem*, that is, as notary to qualify officers. But Caesar A. told him there was much talk of grooming Thomas for the next gubernatorial race.¹

In a spirited campaign in the next October, however, Caesar A. Rodney beat James A. Bayard for the House of Representatives and the patronage opportunities were really opened to the Rodneys. Thomas's reluctance (or the governor's) was overcome. He was commissioned, December 17, 1802, a justice of the Supreme Court.² The judges of this court were also judges of the High Court of Error and Appeals. Rodney has left notes that indicate he was active in the Supreme Court and that at one sitting of the High Court he handed down three decisions.³

¹⁰⁰ Munroe in Reed, *Delaware*, I, 133-134, where he gives an excellent short account of the elections of 1800, 1801, and 1802.

¹ Rodney's Journal, Jan., especially Jan. 22, 30; Feb. 8, 13, 1802, in Hist. Soc. of Del.

² *Governor's Register, State of Delaware, 1694-1851*, I, 44.

³ Memoranda in Hist. Soc. of Del. include notes on cases in the Supreme Court

ANGLO-AMERICAN LAW ON THE FRONTIER

This job, however honorable, was not very lucrative, and Caesar A. had to get Papa completely off his hands. He broached the possibility of sending Thomas as a commissioner to London or Madrid at a really handsome compensation. Thomas hesitated; the governor said it would be hard to replace him, and his friends pointed out that his leaving would work damage to domestic politics!⁴

Rodney had become, in his own eyes at least, an important member of the Democratic party. In a few months, however, patronage⁵ found two jobs for him, far off in the Southwest. Jefferson offered him appointment as a judge of the Mississippi Territory and as a commissioner of a land district in that territory. The commissioner's job paid \$2,000 in a flat sum; the judgeship \$800 a year. He could choose the district east or west of the Pearl River. Rodney chose the western district, on the Mississippi, accepted both the jobs, and set off to see Washington and pick up his commissions. He found that Jefferson was absent from Washington, and that his commissions had been sent by mail, but he talked with Madison and Albert Gallatin and saw the navy yard. The commissions, which he found at home on his return, were dated July 17, 1803.⁶

On the fourteenth of August the white-haired old man left Dover for the last time. Pausing in Wilmington with money in his pocket, he indulged his passion for buying jewelry and trinkets to give children, and for books—Pope's Homer, Virgil, Sheridan's *Dictionary* were among his purchases. He bought his son's chaise and horse and on August 21 set his face to the west, escorted by Caesar Augustus and accompanied by William Bayard Shields. Shields was a young man just admitted to the bar⁷ of Delaware after pursuing his studies in Caesar A. Rodney's office. He would seek his fortune on the frontier.

Caesar left them at York. Rodney and Shields pressed on to Wheeling, surviving the dirty taverns of Pennsylvania that swarmed with bedbugs and fleas. At Wheeling they were joined by Major

March 15, 17, 18, 1803; some undated March notes; April 12-13 notes at New Castle. His judgments in the High Court are dated Aug. 4, 1803. It is not apparent that Daniel J. Boorstin, who gathered available MS notebooks, has printed these notes of Rodney's, nor indeed any covering the times and cases covered by Rodney. Daniel J. Boorstin (ed.), *Delaware Cases 1792-1830* (3 vols.; St. Paul, 1943).

⁴ Thomas to Caesar A., Dover, Jan. 12, 1803, in *Penna. Mag.*, XLIII (1919), 117.

⁵ Jefferson's patronage for Rodney had been solicited by Thomas McKean. Jefferson to McKean, Feb. 19, 1803, quoted in Clarence Edwin Carter (ed.), *The Territorial Papers of the United States* (18 vols. to date; Washington, 1934-), V, 219 n.

⁶ Jefferson to Rodney, June 17, 1803, in *Terr. Papers of the U. S.*, V, 218-219. Draft, Rodney to Jefferson, July 1, 1803; Rodney's journal of the correspondence and of his trip to Washington (July 19-24), both in Hist. Soc. of Del.

⁷ In April. Scharf, *History of Delaware*, I, 564.

THOMAS RODNEY

Richard Claiborne of Virginia, with whom Shields had some sort of agreement about the clerical jobs desired by both. The three of them procured the building of a boat for the perilous voyage to Natchez. She was thirty feet long and eight feet wide, equipped with four berths at the stern, which was covered "in the manner of a stage wagon."

The tedium of waiting for the boat was relieved by sight-seeing and social gatherings with gentlemen of the town. Rodney was interested in talking to Captain Meriwether Lewis, who was about to set out for the Northwest. Lewis told Rodney his main purpose was to ascertain the boundary between the British and American lands, to prevent a dispute which was likely to ensue from the trading of Sir Alexander McKenzie's Company of the West. Lewis did not look robust enough for this mission, and Rodney thought his boat was too big for its waters—fifty-six feet long, with eighteen oars. On September 9, after a parting drink on board this vessel, Rodney waved goodbye as Lewis set forth on his adventure.

It was not until the twentieth of September that Rodney, Claiborne, and Shields, with a crew of two, were able to sail. It was a bad season; the waters of the Ohio were abnormally low and the rocks were exposed and the channels narrow. But Rodney must needs reach the Mississippi Territory by December 1, the statutory date for the first sitting of the land commission.

The long voyage down was not without its social side. On the day after repairs were made to their boat in the shipyard at Marietta, the voyagers made a stop at an island inhabited by a Mr. Blaney Hazzard. This man had erected some elegant buildings and laid out gardens. He invited them to dine on a small piece of ordinary bacon, roasted chickens, preserves, cheese, excellent brandy, wine, melons, and peaches. His host seemed to Rodney an educated gentleman, but there was "something wild and Eccentric in his aspect." Sometime later, perhaps when in 1807 Aaron Burr's men lay in the shadow of Rodney's court, Rodney changed the name in his journal to Harmon Blennerhassett. At Cincinnati there was a visit with old General Arthur St. Clair, and presents were exchanged with the officers at Forts Massac and Pickering. In the dull stretches, Claiborne played his fiddle and Shields the flute. The young men boasted about the gals, and once were thoroughly peeved with Rodney when he would not let the boat wait upon an assignation they had made with some Indian girls. At Louisville they gave passage to another young man seeking his fortune in the colonies: twenty-three-

ANGLO-AMERICAN LAW ON THE FRONTIER

year-old Thomas Hill Williams, who was launched on clerical jobs by Rodney, and became secretary and acting governor of the Mississippi Territory and one of the first senators for the State of Mississippi.

Rodney's lively mind and scientific curiosity gave him zest for all he could hear from the people along the way and all he could see of the natural phenomena. He noted the timber and coal in Pennsylvania, the huge trees of the unexploited wilderness along the Ohio, and the teeming flocks of pigeons and geese. The fossils at the salt licks, especially those he did not see but was told about, stirred Rodney's imagination. And the Great Rock below Louisville reminded him of Luis Vaz de Camoens's description, in his *Lusiads*, of the appearance of the rock at the Cape of Good Hope when Vasco da Gama sighted it on his first voyage to India.

The trip was not without peril. The hazards of the Ohio so worked on Shields that he deserted, saying he would ride down by land; but three days later he caught up with the boat and re-embarked. The worst experience of the voyage occurred on the Great River somewhere between the present Memphis and Vicksburg, when the boat struck a snag and sank. With considerable exertion the party rescued its belongings and beached and repaired the vessel. Through all the vexations and alarms, Rodney seems to have exhibited cheerfulness and courage. His companions, to his profound pleasure, likened him unto Ulysses.

Not until November 28, with the deadline two days away, did they sight the great bluffs of Walnut Hills. The next day they tied up at the landing place of Peter Bryan Bruin, Rodney's brother on the territorial bench. On news of Rodney's presence, Bruin sent claret and whiskey by a boy, along with an invitation to tea. Claiborne and Rodney went up to "Castle Bruin." Rodney characterized Bruin as a robust, talkative man, and a moderate Fed.

At five o'clock in the afternoon of December 1, the appointed day, Rodney arrived at Natchez. He quickly procured a horse and rode the six miles to Washington, the capital village, in time to hold a meeting with Robert Williams, his fellow land commissioner, and Edward Turner, the register. He had been seventy-two days on the rivers.⁸

⁸ The journal of Rodney's trip as far as the Great Rock is in Div. of MSS, Library of Congress, under the title "Book of Accounts of Thomas Rodney Commencing at Dover in the State of Delaware, August—1803." Dates are Aug. 14—Oct. 24. From thence to Natchez, the account is in the Hist. Soc. of Del., headed: "On the Ohio at Great Rock on the N.W. Shore in the next reach above the Yellowbanks P.M. Munday Octr the 24th 1803." For T. H. Williams's joining the company, Rodney to C. A.

THOMAS RODNEY

Thomas settled himself to board at Bennett Truly's in Washington and when he had bought from Garrett and Wood of Natchez a suit of black cloth and trimming, a saddle and bridle, wine and whiskey, and had acquired a sorrel horse, he had all the basic essentials for the Mississippi gentleman save the white hat affected by the planters. This he acquired after some months.⁹

The Mississippi Territory, at the time of Rodney's arrival, was five and a half years old. There were two areas of settlement: a struggling community in the Tombigbee River area north of Mobile, and a triangular-shaped area along the Mississippi River north of the thirty-first parallel. The rich loess bluffs and creek bottoms of the Natchez District supported a booming economy based on cotton, and the population, principally made up of strains of blood from the British Isles and Africa, was growing. It numbered about 7500 in 1801, more than 40 per cent of it Negro slaves. By the time of Rodney's death this figure would be quadrupled.

This small community into which Rodney came was the vanguard of the Anglo-American advance into the Southwest. Or more accurately speaking, it was an outpost, for five hundred miles of wilderness separated it from the settlements in Tennessee. The Spaniards had not evacuated the Natchez District until March 30, 1798, and they had retreated no farther than the thirty-first parallel. It was only the day after Rodney arrived that the governor of the territory, W. C. C. Claiborne, set out from Natchez to take formal possession for the United States of Louisiana, which Rodney could see from the Natchez bluffs. Like all his neighbors, Thomas was highly conscious of his responsibilities as a warden of the marches; like them all he was an expansionist. As a judge, he felt no lessening in the burden of rooting the common law in this new frontier after Louisiana was acquired. He was still the furthestmost missionary, for he viewed with contempt the tyrannical legal heritage of the Creoles.

The government of the territory was the American modification of the English crown colony system that was expressed in the Ordinance of 1787. A governor and judges were appointed and paid by the federal government. To them was added a legislature, of which the lower house was elected by restricted suffrage, and the council

Rodney, Oct. 7, 1803; Dec. 10, 1803, in *Penna Mag.*, XLIII (1919), 129-130, 215. A body of letters in this volume also describes the journey.

⁹ Rodney's account book covering the entire stay in Mississippi is in the New York Public Library.

ANGLO-AMERICAN LAW ON THE FRONTIER

was appointed by the president from nominees of the lower house.¹⁰

Of all the functions of government, that exercised by Rodney and his fellows in the land commission seemed most important to the people of the territory. A biographical sketch is hardly the place for pursuing the tortuous details of the land question in the Natchez District, but since that question occupied a major place in Rodney's career, the essentials of the story through his tenure on the commission must be sketched in. The district had been occupied by the British as part of West Florida, and they made large grants of land, 1763-1779. In 1779 it was conquered by Spain, and occupied by her until March 30, 1798. Georgia claimed the region; in 1785 she went through the farce of "organizing" it into Bourbon County and in 1789 and 1795 sold princely portions of land, including some of the Natchez District, in the infamous Yazoo scandals. The United States put in the fourth claim to sovereignty over the district by virtue of the Peace of Paris, 1783, in which Britain recognized the thirty-first parallel as the southern boundary of the United States, and by virtue of the Treaty of San Lorenzo, 1795, with Spain, which confirmed the same boundary. The act of 1798 setting up the Mississippi Territory authorized commissioners to settle the disputed limits with Georgia. In the agreement finally signed on April 24, 1802, Georgia "ceded" to the United States the lands west of the Chattahoochee, and it was agreed that all actual resident settlers holding land by fully executed British or Spanish grants on October 27, 1797,¹¹ were to be confirmed in their fee.

By 1803 many squatters had moved in, speculators were gambling, and the residents had had six years of fear and agitation to increase the excitement engendered by disputed land titles. Most of the influential ruling class, even the old British element, had their interests vested in Spanish grants, but it was universally feared that the British titles, especially with the sanctions of Jay's treaty to support them, had the strongest legal foundations.

The basic land act was that of March 13, 1803.¹² It confirmed in possession all persons actually inhabiting a claim derived from British or Spanish warrants or orders of survey; heads of families or adults

¹⁰ The basic acts establishing government in the Mississippi Territory, besides the Northwest Ordinance, are those of April 7, 1798, and May 10, 1800. *Terr. Papers of the U. S.*, V, 18, 95.

¹¹ The supposed date of evacuation by the Spanish. This was an error, rectified in subsequent legislation.

¹² *2 Statutes at Large*, 229-235, but the best printing, accompanied by useful references, is that in *Terr. Papers of the U. S.*, V, 192-205.

THOMAS RODNEY

actually inhabiting a claim on the official (but inaccurate) date of Spanish evacuation (1797) were donated their lands up to 640 acres; with the same condition, squatters at the time of the passing of the act were given a priority in the purchase of the tract on which they lived (pre-emptioners). Commissions were set up for the lands west and east of Pearl River, with which all claims had to be registered, accompanied by a plot and the chain of title. When there was a conflict of any of these claims with a British patent, the commissioners had to state the existence of the adverse claims, and the claimant should not have patent unless he had a judicial decision in his favor. The land was to be surveyed into sections and townships as in the Northwest. Lands not confirmed to claimants under the act would be sold.

It was in accordance with the provisions of this statute that Rodney, Robert Williams, and Edward Turner gathered as the commission for the land west of the Pearl River on the day of Rodney's arrival in the territory. Major Richard Claiborne, the companion of the voyage, was appointed clerk of the board, which was soon authorized to hire an assistant for him and a Spanish translator.¹³ Shields got the assistantship. The commissioners were in difficulties before they were fairly organized. They lacked the documents and treaties essential to their work, or even a description of the boundary with the Indians. They felt the need for an attorney to uphold the interests of the United States before them; and although they operated loosely as a court of equity, they had no power to compel a witness to attend and give testimony. Claims trickled in slowly; yet the commissioners were at a loss to know how to make any decision before all the claims were in, as they had no means of knowing where there were conflicting claims.¹⁴

The most numerous and influential claimants, those holding under Spanish grants, were moreover considerably irritated by the operation of the act of 1803. It required them to register lands which had already been registered, and to resurvey lands which had been surveyed. They also had to record, paying so much per word, each instrument which had passed upon their land, sometimes more than half a dozen conveyances.¹⁵ These were titles, it must be added, upon which the

¹³ Secretary of the Treasury to the Board, Jan. 9, 1804, *Terr. Papers of the U. S.*, V, 299.

¹⁴ Rodney to Caesar A. Rodney, Washington, Dec. 8 and 23, 1803, in *Penna. Mag.*, XLIII (1919), 212, 218-219.

¹⁵ Petition to Congress by inhabitants, referred in house March 16, 1804, *Terr. Papers of the U. S.*, V, 312-314; Secretary of Treasury to Turner, Jan. 25, 1804, *ibid.*, V, 302. Rodney to C. A. Rodney, *Penna. Mag.*, XLIII (1919), 336.

ANGLO-AMERICAN LAW ON THE FRONTIER

United States had no right to pass, as they were derived from the confirmation in the agreement with Georgia. The result of this resentment and of a general fear of a scrutiny of their titles was that claimants under Spanish instruments of all types showed a disposition to refuse to file claims with the commission.¹⁶

To cap the climax, the work of survey, without which the commission could issue no certificates, was completely stopped. The surveyor of the lands south of Tennessee was Isaac Briggs, a member of the Society of Friends who was a friend of Jefferson. Briggs's Quaker conscience forbade the type of loose and inaccurate survey which could have been accomplished within the allotted expense. His assistants, who worked by the mile, found the compensation meager and surveying difficult over the rugged hills and deep gullies of the Natchez District, covered with an impassable blanket of great cane. The temper over Briggs's conduct of his business grew so warm that it contributed to political factionalism in the territory.

Briggs and Robert Williams made matters a good deal worse by setting off to Washington, D. C., to try to make matters better. This maneuver accomplished nothing but further vexatious delay, since the Congress passed, on March 27, 1804,¹⁷ an act remedying most of the immediate complaints before the travelers could have left New Orleans. Williams did not return to his job until November, Briggs not until the last of January, 1805.¹⁸ The act extended from March 31 to November 30 the time for filing claims. Claimants under complete Spanish or British grants were relieved of the necessity of recording any evidence other than the original patent, the order of survey, and the plot; and, to further mollify Spanish claimants, it was provided that claims under a full Spanish patent should be surveyed at the public expense. An agent of the United States to investigate claims and represent the public interest before the board was authorized. Rodney's young protégé Shields received this appointment.¹⁹

The board proceeded in its work, which was augmented by each fresh act of Congress, harassed by more and more causes of delay and by considerable agitation among the inhabitants. Nearly two thousand claims had been filed by the first of April, 1804, when the publication of a letter from Albert Gallatin denying that Spanish

¹⁶ Secretary of Treasury to Turner, Jan. 25, 1804, *Terr. Papers of the U. S.*, V, 302.

¹⁷ *Ibid.*, V, 196 n 36.

¹⁸ Rodney to C. A. Rodney, Dec. 14, 1804, and Jan. 24, 1805, *Penna. Mag.*, XLIV (1920), 180-181, 185.

¹⁹ Secretary of Treasury to Shields, June 2, 1804, *Terr. Papers of the U. S.*, V, 327.

THOMAS RODNEY

titles had any validity except that granted by United States statute caused not only the "mass" but responsible leaders as well to advocate violent resistance. The excitement increased when the board gave permission to Judge Elihu Hall Bay of South Carolina, one of the largest British claimants, to survey his claims so that he could go home. The rumor flew about that this meant all British claims would be established. Rodney had no sooner calmed the "dreadful ferment" than Gallatin almost caused another outburst by advising the commissioners to stop issuing certificates until the British claims were all in. This advice not only brought to a standstill the final work of the board on any claim, but freshly alarmed the territory, where gossip said that Gallatin was speculating in British claims.²⁰ There was opposition to Turner, the register, who was accused of lining his purse at the expense of claimants and was suspected of partiality in the conflicting claims of the large Green family, into which he had married. He was forced to resign, and the President appointed a man whom no one could find. More delay ensued, since Williams was still absent and Rodney alone did not make a quorum. The job finally fell to Thomas Hill Williams, the third of Rodney's companions on his river voyage to get an income from the commission.²¹

The wonder is that Rodney, rushing from court to commission and back again, escaped censure from the populace. If the extant letters and memorials show no praise for his labors, neither do they exhibit any accusations. It would seem that he laid himself open to charges by the sentimental interest he took in the grant of the late Admiral Sir G. B. Rodney, with whom Rodney had tried to start a family correspondence when he was a boy. Admiral Rodney's grant of 5,000 acres lay on the north fork of Fairchild's Creek. Thomas had it surveyed informally, gathered evidence on the conflicting claims that overlay it, wrote to the Rodney heirs in England about it, and even toyed with the idea of trying to acquire this family barony.

Perhaps the sympathy with which Rodney inclined an ear to the people who constantly ran to him "out doors," particularly as he

²⁰ Gallatin to Edward Turner, Jan. 25, 1804, *Terr. Papers of the U. S.*, V, 302; same to same, May 31, 1804, *ibid.*, V, 326; Rodney, incomplete undated letter to unknown, in Hist. Soc. of Del.; Rodney to C. A. Rodney, April 6, April 18, Sept. 7, 1804, *Penna. Mag.*, XLIII (1919), 349-350, 352; XLIV (1920), 56.

²¹ Williams's commission was dated March 3, 1805. Rodney had repeatedly recommended Williams for patronage. The young man had in 1804 been assisting Joseph Chambers, the register in the Tombigbee region (Rodney to Secretary of Treasury, Dec. 1, 1804, *Terr. Papers of the U. S.*, V, 357). Williams was also recommended by R. Williams and Briggs. Voluminous correspondence on the change in registers in *Terr. Papers of the U. S.*, V.

ANGLO-AMERICAN LAW ON THE FRONTIER

moved about the judicial circuits, and the assiduity with which he represented the claimants' grievances to Washington, not less than his conduct on the board, were appreciated in the territory.

From a fragmentary "Commissioners Docquet"²² we can get a glimpse of the procedure on the board and of Rodney's attitude toward his work as a member. In July of 1804 various cases came on in which some Spanish, donation, and pre-emption claims conflicted with British patents of Judge Bay at the Walnut Hills. Each side was represented by lawyers, Stephen Bullock and James Brown for the pre-emptioners, etc., Attorney General George Poindexter and Lyman Harding for Bay, Shields for the United States. Witnesses were adduced to give evidence on the details of the movements of individuals and the circumstances of planting and clearing in the 1780's and 1790's. Bullock applied for a *dedimus* to take testimony of an absent witness. Rodney refused; his being a summary jurisdiction no dilatory pleas would be admitted, especially as there was no affidavit of what the witness would say so that the board could clearly see whether the testimony would be material. Bullock then asked that his motion be entered on the journal. He was refused, to prevent unnecessarily swelling the journal (there was no higher court before which the record could be carried, anyway). Brown wanted to withdraw a defective claim. Rodney refused. Brown could amend, but the board would not throw out a claim on technical deficiencies in any event. The difficulties of describing a claim in unexceptionable terms were too great. "The *Merits* of Every Case is what the Board attend to, not the legal forms of doing business, as practiced in the Courts of Law." When a donation claim is filed, and the evidence will not support a donation, the board will grant a pre-emption if the claimant desires it. In this loose and equitable manner did Rodney do business as a commissioner.

Through 1805 and 1806 the board worried haltingly along with the task that was to have taken less than a year. Of course it was unable to issue the certificates that would enable the pre-emptioners to start paying for their land; so there were repeated alarms in the territory and repeated extensions by Congress.²³ The commissioners

²² At the back of "Judge Rodney's Docquet Of business Done out Of Court At his Chambers," in Hist. Soc. of Del.

²³ Rodney to William Lattimore (the delegate to Congress), Nov. 25, 1805, *Terr. Papers of the U. S.*, V, 428-429; Memorial of the assembly to Congress, referred Dec. 4, 1805, *ibid.*, V, 430; Act of April 21, 1806, 2 *Statutes at Large* 400; Rodney to Jefferson, Dec. 14, 1806, *Terr. Papers of the U. S.*, V, 489-491; Memorial of the assembly, referred Jan. 27, 1807, *ibid.*, V, 497-505; Act of March 3, 1807, Sect. 8., 2 *Statutes at Large* 447.

THOMAS RODNEY

finally, however, concluded their sittings on claims on June 13, 1807,²⁴ after three and a half years, and on July 3 dated their final report to the secretary of the treasury.²⁵ Here ended Rodney's work on land claims, but not the problems of the disposition of the public lands nor Rodney's concern for them. He saw need for relief of settlers who had had a British or Spanish grant but had disposed of it before 1798; of minor grantees; and of claimants under various stages of grants under Spain and England not confirmed by law.²⁶

Industry and application, to say nothing of decisiveness and willingness to take on heavy responsibility—virtues that almost seemed foreign to the Delaware Rodney—characterized Rodney the judge quite as much as they did Rodney the land commissioner. The writer has set down elsewhere in this book an account of some of Rodney's decisions and he must leave to those able to pass on such matters a verdict upon the quality of Rodney's judicial conduct. But it can be said that he was dutiful, that he excelled in character many of his contemporaries on the American bench, and that, while certainly far from being either studious or learned, he read and noted some law books, as various of his jottings attest.

When Rodney came to the Natchez District the court system in which he sat consisted of superior courts held by the federally appointed judges in each of three districts twice a year, with both legal and equitable, both civil and criminal, jurisdiction.²⁷ The districts were Adams, made up of Adams and Wilkinson counties; Jefferson, composed of that county and Claiborne; and Washington, comprising all the settlements on the Alabama side. Rodney seems never to have presided over a court in the Washington district. It was an isolated

²⁴ Rodney to C. A. Rodney, June 14, 1807, *Penna. Mag.*, XLV (1921), 36.

²⁵ Printed in *American State Papers* . . . , ed. Walter Lowrie and Walter S. Franklin (38 vols.; Washington, 1830), *Public Lands*, I, 598 ff. The report dealt with certain classes of lands not confirmed, but required by various acts of Congress to be reported upon. An abstract of certificates issued by the commission may be found in the same volume, pp. 859-886.

²⁶ Rodney to Poindexter (territorial delegate to Congress), Nov. 20, 1807, Claiborne Papers, Book B, in Mississippi Department of Archives and History. Subsequent developments in U. S. land policy in the territory may be followed in *Terr. Papers of the U. S.*, V and VI. They are summarized in my thesis, "American Beginnings in the Old Southwest," in Duke University Library.

²⁷ "An Act to provide for the more convenient Organization of the Courts of this Territory," MS in Mississippi Archives. Printed in the laws for 1801-1802, photostat with no title page in same depository, pp. 21-98; act giving equity jurisdiction to the superior courts is at pp. 186 ff. See another section of this book. Before this act, the highest court was a supreme court held by the territorial judges, to which appeals lay from county quarter sessions and county courts of common pleas. Laws passed by governor and judges, Feb. 28, 1799, Oct. 30, 1800. MSS in same archives.

ANGLO-AMERICAN LAW ON THE FRONTIER

region. Appeals to the superior courts could be made from the county courts.

Early in 1805, partly because of the multitude of petty appeals from the county courts, the court system was remodeled. A supreme court of the territorial judges or any two of them, possessing original equity jurisdiction but otherwise an appellate court, was to sit twice a year at the county seat of Adams. From the lower courts it heard and determined not only appeals but such matters as reserved points, demurrers, and motions for new trials. One or more of the three judges presided at the circuit courts in each county twice a year. Under this arrangement, which seemed to Rodney similar to that of the King's Bench in England,²⁸ the circuit judges had all the powers of justices of assize, nisi prius, oyer and terminer, and gaol delivery. The court of Washington District, away to the east, for which a judge of its own had been authorized by Congress in 1804,²⁹ could apparently exercise all the powers of both the supreme and circuit courts, except that a writ of error lay to it from the supreme court.³⁰

Late in 1809 the supreme court was abolished, and the circuit courts in each county were now to be styled "Superior Courts of Law and Equity," with the powers and jurisdictions heretofore exercised by both the supreme and circuit courts.³¹ There were by the end of 1809 two additional counties in the Natchez District, Amite and Franklin, in which the territorial judges had to ride circuit.

The burden of holding the courts was seldom shared by a full complement of three judges in Rodney's day. When Rodney arrived there was indeed a full bench. There sat with him David Ker, a graduate of Trinity College, Dublin, who had been presiding pro-

²⁸ Rodney to Madison, Jan. 23, 1805, in Rodney Papers, Div. of MSS, Library of Congress.

²⁹ Act of March 27, 1804, 8th Cong., 1 Sess., Ch. 59, 2 *Statutes at Large* 301.

³⁰ Act of March 2, 1805, MS in Mississippi Archives. Description of court system in Rodney to C. A. Rodney, April 18, 1805, in Hist. Soc. of Del.

³¹ Act of Dec. 22, 1809, in *Acts Passed at the First Session of the Sixth General Assembly of the Mississippi Territory, Begun and Held at the Town of Washington on Monday the 6th Day of November, Anno Domini 1809* (Natchez, John Shaw, 1810). Act of Congress, March 2, 1810 (2 *Statutes at Large* 563), provided for a fifth territorial judge for Madison County, a new settlement in the bend of the Tennessee, and provided that the judgments of the courts of Madison and Washington counties might be appealed to the Adams County Superior Court.

The territorial act of Jan. 20, 1814, after Rodney's death, restored the Supreme Court, calling it "of Errors and Appeals," but gave it original jurisdiction in all save small suits, and turned the superior courts into petty county courts (MS in Mississippi Archives). Not all the provisions of this act applied to the counties east of Pearl River. This act governed the main outlines of the judiciary system until Mississippi became a state in 1817.

THOMAS RODNEY

fessor when the University of North Carolina opened its doors, and had arrived in the territory in March of 1801.³² The senior judge, and therefore denominated chief justice by the court clerks, was Peter Bryan Bruin. Bruin was also an Irishman. He saw active service with the Virginia troops during the Revolution and in 1787 or 1788 brought a large colony with him to settle in the Spanish dominions. A trusted alcalde and favorite of the Spanish, he nonetheless played with Andrew Ellicott and the Permanent Committee in the intrigues that accompanied the transfer of the district to the United States. As a Federalist, he was commissioned (May 7, 1798) one of the first judges in the territory. It is not recorded that he was learned in the law.

In little more than a year, however, Ker died.³³ His death was made the occasion for an unsavory exchange of reflections on the members of the court. John Shaw, a scribbler for a political faction headed by Acting-governor Cato West, to which Ker had belonged,³⁴ took occasion to publish a memorial (which the assembly had refused to adopt) that, under the guise of praising Ker, attacked Bruin and Rodney: ". . . want of that degree of legal talents, knowledge and acquirements on the bench. . . ."³⁵ Shaw wrote Jefferson that the judges had not "adequate knowledge of jurisprudence," nor "firmness of character." Rodney wrote to his son that Ker had read law very briefly before he was made judge. "He was very uncouth in his Manners and very captious so that he often Interrupted the business by his Interference and disputes with the Barr and was More unpopular than perhaps any other man in the Territory Except his Eulogist Doctr. Q[u]ack Shaw. . . ."³⁶

Whatever his qualities, Ker could no longer help Rodney ride circuit. A successor, George Mathews, did not arrive until December

³² Sheriff Adams County, Jan. 9, 1802; appointed judge by Jefferson, Jan. 25, 1803. *Terr. Papers of the U. S.*, V, 129 & n., 130-131, 184. See Kemp P. Battle, *History of the University of North Carolina* (2 vols.; Raleigh, 1907-1912), I, 104, & indexes.

³³ Jan. 21, 1805. Rodney to Secretary of State, Jan. 23, *Terr. Papers of the U. S.*, V, 373. At a session of the Jefferson Superior Court early in January, the weather was extremely cold and the house in which the court sat was "open." Rodney fell ill. (Rodney to C. A. Rodney, Jan. 16, 1805, in Div. of MSS, Library of Congress.) Battle's account says Ker died as a result of getting chilled at a court session.

³⁴ Isaac Briggs to the President, Feb. 9, 1805, *Terr. Papers of the U. S.*, V, 383.

³⁵ Printed, with relevant material, in *Terr. Papers of the U. S.*, V, 378 n. An answer, which appeared in the rival paper, here undated, was in the Feb. 2, 1805, issue of the *Natchez Herald*. The editor reprinted the answer June 17, 1807, and attributed it to George Poindexter and W. B. Shields.

³⁶ Rodney to C. A. Rodney, Feb. 15, 1805, in Div. of MSS, Library of Congress.

ANGLO-AMERICAN LAW ON THE FRONTIER

17, 1805,³⁷ and he was translated to Orleans a month later. That left Bruin. But alas, he was a weak brother for Rodney:

Judge Bruin [wrote Rodney, with generous detachment] Is a friendly Hospitable good Man; and a Man of Good Education and good Sense, and when Sober, Upright in his Judgements—But has suffered himself To acquire Such a Strong habit of Drinking Spiritous Lyquoirs, That he cannot restrain himself—This kept him from the last Supreme Court—but being determined To Attend The fall Courts, he Came down from the Jefferson Court and Attended the Adams Circuit with me, but was obliged To Stay off the Bench Two days—Then he Set off with me to Wilkinson Circuit, but only got to Col. Elliss Plantation, Buffalo—and came back with me on my return. And Today he went on the bench of the Supreme Court quite Intoxicated, So that the barr applied To me To Adjourn the Court, which was done. Bruin when Sober is a very pleasant Companion, So that I very much regret his unhappy propensity To drinking—but habit has become So Uncontrolable and the public business has been So much Interrupted by it, that Everybody, & Especially his best friends, Think it high Time for him To resign—³⁸

But Judge Bruin was mulish. He clung on until his disgrace was made public. The territorial assembly finally in 1808 moved to have him impeached in the Congress. A committee of the House of Representatives began to take steps, and in October Bruin resigned.³⁹ In the meantime, of course, Bruin's disability increased Rodney's work. In March of 1807, for example, he notes: "Returned from Visit to Mr. Bingaman Mr. W. Dunbar & Governor Sargent, when I found the Sheriff of Jefferson waiting for Me To go up To Jefferson Circuit Judge Bruin not being there—"⁴⁰

The attendance at more of the circuits than his share was not only a danger to the old judge's health, but a tax on his purse. At an oyer and terminer session at Greenville in 1804, he paid to Cotton the tavern keeper \$15.25, and to Indians and servants \$10.⁴¹

A successor to Mathews came a year and a half after he departed! Walter Leake of Virginia arrived on May 25, 1807.⁴² He and Rodney

³⁷ Date he took his seat on the Supreme Court bench (Rodney's Account Book, New York Public Library). Commission dated July 1, 1805, revoked Jan. 20, 1806. Mathews's service on Mississippi bench ended Jan. 18. *Terr. Papers of the U. S.*, V, 420 n., 421 n.

³⁸ Entry of Nov. 27, 1806, in Chambers Docket in Hist. Soc. of Del. See also below, in the court notebooks.

³⁹ Effective March 1, 1809. The documents are in *Terr. Papers of the U. S.*, V, 615, 626-627, 650. Bruin died Jan. 27, 1827.

⁴⁰ Entry of March 16, 1807, Chambers Docket in Hist. Soc. of Del.

⁴¹ Entry, Jan. 14, 1804, Rodney's Account Book, in New York Public Library.

⁴² Rodney to C. A. Rodney, May 25, 1807, *Penna. Mag.*, XLV (1921), 34.

THOMAS RODNEY

quite frequently differed, and, since there were only two judges, this meant that stalemates were frequent in the Supreme Court; but at least Leake could take the circuits and do some of the work in vacations. He was absent for part of Rodney's period. He seems to have left in 1807 and 1809 to get his family.⁴³

Left alone again, in 1809, to carry the burden of the rule of law on the frontier, Rodney could look forward to assistance from the first real scholar—and a man of abundant energy—that the federal government sent to the Natchez District: François-Xavier Martin, a compiler of laws and of history, and a novelist.⁴⁴ Harry Toulmin, a Unitarian minister and college president, also a man of considerable brains and energy, was judge in the East from 1804 to the end of the territorial period. But he could not help Rodney in the West. Rodney, curious about his prospective brother, Martin, gathered data on him from men in the territory. Major Isaac Guion told him he had known Martin in New York in 1784. He was clerk to a French trader, who sent him to New Bern, North Carolina, with a consignment of goods. (Martin had an interesting career in Carolina.) Doctor John Coxe, who had been everywhere, spoke truth when he described Martin as industrious and informed, but "purblind & a Viry poking kind of man. Questions if he could find the way from N. C. here without a Guide." Martin could have embellished the Mississippi judiciary, as he did the Orleans, with real brilliance. But although he was appointed in March of 1809, by October he still had not arrived.⁴⁵ On March 21, 1810, he was appointed to the bench of Orleans Territory, so that any pause he made in Mississippi was brief. So probably was that of the last of Rodney's contemporaries in the Mississippi judiciary, one Oliver Fitts, in 1810 attorney general of North Carolina. He was appointed a territorial judge in April of 1810; it does not transpire when he actually arrived. But at the end of that year he left for home and probably never returned.⁴⁶

⁴³ Rodney to C. A. Rodney, Sept. 30, 1809, *Penna. Mag.*, XLV (1921), 182. Set off in June, not expected back until spring. He had set off before, Dec. 22, 1807 (Chambers Docket, in *Hist. Soc. of Del.*), for the same purpose. No evidence of what happened. For Leake's appointment and tenure, see *Terr. Papers of the U. S.*, V, 515 & n. He was still on the bench at the end of the territory's history. Leake was elected one of the first senators of the state of Mississippi and was governor from 1822 until his death in 1825.

⁴⁴ Among the sketches of Martin, 1762-1846, see those in the *Dictionary of American Biography*, XII, 335; and Samuel A. Ashe (ed.), *Biographical History of North Carolina* (5 vols.; Greensboro, N. C., 1905-1906), IV, 306-314.

⁴⁵ Note headed "Judge Martin, Oct. 3d. 1809," in *Brown Univ.*

⁴⁶ *Terr. Papers of the U. S.*, VI, 60 n., 166, 357. Fitts was on the bench at the

ANGLO-AMERICAN LAW ON THE FRONTIER

Out of court Rodney's duties as a judge were numerous. In "chambers," which might mean anywhere, he of course had many prisoners before him on writs of habeas corpus. He held bail hearings; ordered the issuance of both law and chancery writs (especially injunction, error, and certiorari); and examined and certified candidates for license to practice law. He did considerable plain notary business: took depositions and acknowledgments of deeds and other documents, and administered oaths of office to the more prominent officials. "The Judges Stand Priests sometimes here in Cases of Matrimony . . . the better Sort prefer having it done by the Superior Judges. . . ." To oblige Judge Bruin, Rodney traveled sixty miles up to Bayou Pierre to marry the judge's daughter to Dr. John Cummins.⁴⁷ The groom gave him two doubloons, which Rodney translated as \$32.00.⁴⁸ Rodney left the Supreme Court in the midst of the Burr excitement to have the pleasure of marrying W. B. Shields to Victoria Benoit, a child of fifteen with a large fortune of her own and powerful and numerous connections.⁴⁹

Rodney was once called on by the governor to act as an investigator in an incident that, while it was not of much significance to the judge in itself, bore upon one of his passionate interests as a responsible guardian of the frontier. The incident was the kidnaping of the Kemper brothers in 1805 and their transportation into Spanish West Florida. If for no other reason than that a European power controlled the mouths of all the territorial rivers save the Mississippi, Rodney was convinced that the Spanish must be made to yield West Florida. He was ready, if necessary, to take up his shield again—many of the old officers said they would follow him to Mexico City; and at the time of the muster on the Sabine in 1806 he was quite prepared to assume command of the territorial forces (it did not occur to anyone to proffer him such a post), but his rank must be not less than that of major general.⁵⁰ He shared the regret of the acting

October Term, 1810, of the Superior Court of Adams County. Judgment Book B, p. 348, Adams County Courthouse.

⁴⁷ Rodney to C. A. Rodney, March 12, 1804, *Penna. Mag.*, XLIII (1919), 340-341.

⁴⁸ Rodney's Account Book, in New York Public Library. The unit of hard currency circulating in the territory was the Spanish dollar, which Rodney put down at 7s., 6d. A half American eagle is mentioned several times in his account book, at \$5.00. On Christmas eve of 1806 a French guinea was paid to him—valued at \$5.75. A ubiquitous unit of money was the bit, "just about a shilling."

⁴⁹ Feb. 5, 1807. Rodney to C. A. Rodney, Feb. ?, 1807, *Penna. Mag.*, XLIV (1920), 299.

⁵⁰ Rodney to C. A. Rodney, Oct. 31, 1804; Aug. 25, 1806, *ibid.*, XLIV (1920), 66, 284.

THOMAS RODNEY

governor that war did not break out.⁵¹ Rodney lived to see the West Florida revolution and to read Madison's proclamation annexing the area to the United States; the current excitement in the Southwest was the main subject of his last letters.⁵²

When Rodney first visited Pinckneyville, the home lair of Reuben Kemper, the celebrated filibusterer, Nathan and Samuel Kemper had just concluded a summer of creating disturbances in the Spanish dominions below the line. The Kempers and the Cobbs he saw, and was satisfied from talking with them that the affair, which had included an armed invasion and a proclamation of independence, was a purely personal retaliation for ill usage by the Spanish officials! Rodney unofficially told the banditti that they had acted imprudently, and could not continue to use the territory as a base for depredations against Spain.⁵³

Thus lightly admonished by authority, and with no further restraint, the Pinckneyville gang continued its border war unabashed.⁵⁴ On September 3, 1805, a body of about twelve white men, faces blacked, and seven Negroes burst into Nathan Kemper's house and beat and abducted Nathan and Reuben, then proceeded to Samuel Kemper's and seized him. The kidnapers took the Kempers below the line where they were delivered to Captain Solomon Alston, at the head of twelve men of the West Florida forces, who set out by way of Bayou Tunica landing to send the captives to Baton Rouge. Opposite the American garrison at Point Coupée the prisoners communicated their need for help and were rescued by Captain William Wilson, who took the Spanish subjects in the escort to Captain Richard Sparks at Fort Adams, in the United States. The governor ordered them released, although it was obvious they had acted in concert with the kidnapers above the line.

Rodney was informed of the crime by Henry Hunter, Joshua Baker, and Squire Wall, three of the justices of the peace in Wilkinson County, and he told Baker to take depositions to ascertain the

⁵¹ Cowles Mead to the assembly, Dec. 2, 1806. MS message in Mississippi Archives, M.T.A., Ser. A, Vol. 7.

⁵² *Penna. Mag.*, XLV (1921), 194-203.

⁵³ Rodney to C. A. Rodney, Oct. 13, Oct. 20, 1804, *ibid.*, XLIV (1920), 59-61. The names of the Cobbs were William and Arthur. ("List of the Rebels in Feliciana," Aug., 1804, in Spanish transcripts in Mississippi Archives, Vol. VIII.) An account of these matters, which cannot be pursued here, is in Isaac J. Cox, *The West Florida Controversy, 1798-1813* (Baltimore, 1918), pp. 152-157.

⁵⁴ Charles Grand Pré to Robert Williams, May 29, 1805, in Mississippi Archives, M.T.A., Ser. A, Vol. 6, names thirty-five American citizens in the Kemper gang. Williams promised (to Grand Pré, June 10, 1805, copy in Spanish transcripts in Mississippi Archives, Vol. VIII) to take action, but he didn't.

ANGLO-AMERICAN LAW ON THE FRONTIER

facts. Then Governor Williams sent Rodney himself down to the scene to find out just what had happened. The judge spent September 25 and 26 examining witnesses and reported to the governor September 30. The Kempers he caused to be placed under peace bonds not to disturb the Spanish.⁵⁵ They continued, however, to do so; Judge Harry Toulmin in the Mobile section had great trouble from them, but Rodney met the Kempers again only through civil suits they brought against the ringleaders of the kidnapers. These suits are reported in the documents below.

A year after the Kemper affair there came the most notable of all Rodney's appearances as a judge: his handling of Aaron Burr. The story of Burr is often told, but nobody has yet found satisfactory truth. An effort will be made in this account only to recite the bare outlines of the mystery in so far as they involved Thomas Rodney. He played a vacillating part, one not altogether understandable and on the whole not altogether creditable.

Burr had an incredible advance build-up with Rodney and the Southwest before he finally appeared in person. No modern press agent, no master of fictional suspense, could have done better. Already in October of 1806 Rodney was taking depositions⁵⁶ about a formidable conspiracy involving prominent people; he issued a warrant for the arrest of Dr. John Carmichael,⁵⁷ who was thought to be privy to the plot. He heard that Governor Williams was involved, and Daniel Clark and General James Wilkinson.⁵⁸ Alarming gossip about the general had long circulated in the West. A woman had told Rodney in 1805 that Wilkinson was in the pay of Spain; a relation of hers used to carry messages for him to the Spanish.⁵⁹ Rodney in November sent off a warning to President Jefferson that Burr, Wilkinson, and others planned to set up an empire in the Southwest in conjunction with Spain and England.⁶⁰ Cowles Mead, secretary and acting governor of the territory in Williams's absence,

⁵⁵ Report of Rodney, affidavits, correspondence, in *American State Papers, Foreign Relations*, II, 683-689; Mississippi Archives, M.T.A., Ser. A, Vol 6. Rodney to C. A. Rodney, Sept. 7, Sept. 30, 1805, in Div. of MSS, Library of Congress. Rodney to T. Gammel, Oct. 2, 1805, *Penna. Mag.*, XLIV (1920), 189. Rodney's report was printed for the public in a Natchez newspaper.

⁵⁶ Evidence of but one, in Chambers Docket, that of Joshua Baker of Wilkinson County.

⁵⁷ Loose warrant in judicial notebooks, Div. of MSS, Library of Congress.

⁵⁸ Rodney to C. A. Rodney, Nov. 11, 1806, and memo of the same date, in Div. of MSS, Library of Congress.

⁵⁹ Memorandum, headed "September 7th 1805," in Hist. Soc. of Del.

⁶⁰ Rodney to Jefferson, Nov. 21, 1806, *Penna. Mag.*, XLIV (1920), 294-296.

THOMAS RODNEY

animated by his own fears and by alerts from the federal capital, mobilized the militia. Young Poindexter and Shields, already political cronies of Mead, were made aides-de-camp to the governor, and dashed about in a military flurry.⁶¹ Unusual cold and snow struck the territory along with the impending invasion.

On the tenth of January, 1807, Burr's flotilla arrived. By the fifteenth Rodney was beginning to take depositions from members of the expedition and to issue some of them recognizances to appear before an adjourned session of the Supreme Court of the territory on February 2.⁶² The military spirit, however, began to operate. F. L. Claiborne was ordered on the sixteenth to arrest "the restless spirits about Natchez," and send them out to Rodney.⁶³ Burr, whose rather justified fear was apparently that he would be turned over to the traitor Wilkinson for the latter to make capital of, was persuaded to surrender to the civil authorities; he was taken before Rodney on the eighteenth or nineteenth.

By this time many people were beginning to feel sheepish. The great invasion consisted of nine or ten boats, manned by less than a hundred nondescript men and boys, mostly unarmed. "The Great Bubble about Col: Burr Has Bursted," wrote Rodney. Burr told him that he was only going to make a settlement on the Washita, and that he was the victim of a persecution by his enemies and the Spanish ambassador. Rodney expressed to Burr his indignation over the use of the military, and promised Burr that if Wilkinson or any other military force tried to remove him from the territory, he would "put on old '76 and march out in Support of Col. B. and the Constittn." Nonetheless, thought the judge, the project ought to be examined by judicial process.⁶⁴

But it was not until January 22, Burr meanwhile enjoying the society of Washington as the guest of Benijah Osmun, that Rodney had Burr sign a recognizance.⁶⁵ By a remarkably informal ordering of this legal process, Rodney bred trouble for himself. The incident was not without its comic relief. Rodney practically persuaded Osmun and

⁶¹ Most of the official documents of the territorial executive on Burr are printed in Mississippi Archives, *Third Annual Report* (Nashville, 1905), pp. 40 ff.

⁶² Chambers Docket in Hist. Soc. of Del.: Jan. 15, Alexander Ralston; Jan. 16, Stokly Hayes; Jan. 16, Samuel W. Butler; Jan. 17, R. L. Pryor; Jan. 19, Frederick Haymaker, Hugh Allen, John Erwin, John Plum.

⁶³ Meade to Claiborne, Mississippi Archives, *Third Annual Report*, p. 63.

⁶⁴ Rodney to C. A. Rodney, Jan. 20, 1807. The remarkable quotation was told by Burr to Harmon Blennerhassett. Blennerhassett's Journal, Jan. 24. Both in Div. of MSS, Library of Congress.

⁶⁵ Chambers Docket, Jan. 22., in Hist. Soc. of Del.

ANGLO-AMERICAN LAW ON THE FRONTIER

Lyman Harding to bond themselves to the amount of \$5,000; then Burr skipped out. Burr said the recognizance was the product of an hour's negotiation and that Harding had written it out; Rodney's story was that Harding, starting to write, threw down his pen and told Rodney to draw the document, which the judge did at some later time, holding Burr to appear at the court session and "not depart Without leave of Said Court." Naturally Burr disputed the recognizance in the form in which Rodney drew it, and at the Richmond trial it was called a forgery.⁶⁶ It was in opposition to the advice of Attorney General Poindexter, anyway, that Rodney bound Burr to appear. He thought the Supreme Court did not have jurisdiction, and that it would be wiser in any event to commit Burr to a federal court outside the colony and inside the United States.⁶⁷ But Rodney proceeded on his course, issuing a venire to "the marshal" to secure a jury, and taking recognizances of Alexander Ralston and of Comfort Tyler,⁶⁸ who was arrested by the militia.⁶⁹

The return to the territory about January 26 of the governor, Robert Williams, seemed to cool everyone off. After all, it wasn't *his* show. Rodney credited him with stopping a tendency to military government, and Burr, who had taken to his boats on the other side of the river, thought it safe to return to the territory and pay his respects.⁷⁰

On Monday, February 2, came a great crowd of jurors, witnesses, and spectators to open the case that Rodney styles *The United States v. Col. Aaron Burr*. Bruin was with Rodney on the bench. A question arose over the impaneling of the grand jury, and court was adjourned. Next day, this question settled, Rodney delivered a solemn charge to the jury, on which he permitted Burr to comment and enlarge. The jury retired without any bill at all being laid before them by the attorney general, who denied again the jurisdiction of the court. (The problem of jurisdiction is discussed below.) On either the third or fifth, Poindexter moved to dismiss the jury, a motion which lost—Judge Bruin for, Rodney against. Burr, seeing that he was among friends, also opposed the motion. The jury heard wit-

⁶⁶ I have not seen either Harding's or Rodney's writing. For Rodney's story see his account below. See also Walter Flavius McCaleb, *The Aaron Burr Conspiracy* (2d ed.; New York, 1936), p. 231; and *American State Papers, Miscellaneous*, I, 570.

⁶⁷ Poindexter's opinion, addressed to the governor, Jan. 21, 1807, in Claiborne Papers, Book E, Mississippi Archives.

⁶⁸ Chambers Docket, Jan. 22, 24, in Hist. Soc. of Del.

⁶⁹ Blennerhassett's Journal, Jan. 22, in Div. of MSS, Library of Congress.

⁷⁰ Rodney to C. A. Rodney, Feb. 23, 1807; Blennerhassett's Journal, Jan. 27, 28; both in Div. of MSS, Library of Congress.

THOMAS RODNEY

nesses that included John Graham, the agent sent from Washington to make sure Burr was caught. Rodney said all Graham's testimony was hearsay. Indeed, if any evidence of either treason or filibustering was presented against Burr in Mississippi no one recorded it.

The grand jury therefore brought in a report that Aaron Burr was guilty of no crime or misdemeanor. But the Homeric comedy proceeded. The jury did have grievances. They presented the calling out of the militia and the undignified treaty by which Poindexter and Shields, for Mead, had persuaded Burr to treat with Mead. And, finally, the jury presented as a grievance "the late military arrests made without warrant. . . . [We] seriously regret that so much cause should be given to the enemies of our glorious Constitution, to rejoice in such measures being adopted in a neighboring Territory [Orleans], as[,] if sanctioned by the Executive of our country, must sap the vitals of our political existence, and crumble this glorious fabric into dust."⁷¹

Rodney was routed, but he would not admit it. It is hard to see why, from any but a patriotic or some other emotional view, he should have tried to have Burr indicted anyway. He had examined the witnesses and he knew there was no evidence. He had an opinion to vindicate, that the Supreme Court had jurisdiction, but that was not at issue *after* the grand jury refused to indict. One might think he was trying to support the national administration, especially since his son, Caesar Augustus, became attorney general of the United States on January 20. But Rodney was no avid partisan of Jefferson, and he probably did not know of his son's elevation to the cabinet until after the trial. Burr's lawyer entered a motion to dismiss his client. Bruin was for the motion; "Rodney against it as the Atty. General had Said he had a motion To make on that subject and was now absent." Rodney's attitude could have been explained as sheer mulishness, or as deriving from fear that he had not got to the bottom of Burr's business. His action seems at this distance to have been unfair and illegal. Burr, hiding at the house of Dr. Cummins,⁷² Bruin's son-in-law, pointed out as much to Governor Williams, and he failed to appear when court met on the seventh.

Then, blowing cold, or perhaps afflicted with conscience or frustration, Rodney seems to have refused temporarily to take further action

⁷¹ Rodney's account of trial, below. Poindexter's (*American State Papers, Miscellaneous*, I, 568) differs in chronology but not in essence. Presentment in Mississippi Archives, *Third Annual Report*, p. 101.

⁷² McCaleb, *Burr Conspiracy*, p. 231.

against Burr's companions. The cause was taken up by a new actor on the scene. Among the many visitors in the Natchez District during the cold days of early February was Rodney's redoubtable brother from the East, Judge Harry Toulmin. Through a desire to seize the center of the stage, or to show Rodney up, or perhaps to satisfy the demands of Graham, Toulmin issued warrants for the arrest of Burr, Floyd, Ralston, and Blennerhassett, the last of whom cowered on his boat awaiting counsel from Harding and ready to make a dash for Spanish territory.⁷³ Toulmin played cat and mouse with the poor devils for a while, and then committed Blennerhassett for trial in Virginia, and Floyd and Ralston for trial in the Mississippi Territory, where Dr. Carmichael was supposed to have testimony to convict them.

About the same time, on February 10, a note in Burr's handwriting addressed to Tyler and Floyd was found on a Negro of Dr. Cummins's, telling them to keep their arms in order and to expect him the next night.⁷⁴ This message sent fresh waves of panic through Mississippi officialdom. Williams had two score or more of Burr's followers placed under arrest for twenty-four hours. Rodney felt that Toulmin's actions toward Blennerhassett and the rest were arbitrary, and that Williams's military arrests were unconstitutional. If he were applied to, he intended to uphold the Constitution and would not deviate even to please the President. "We had better be assailed by 10,000, openly," he argued with his friend Speaker Ellis, "Than That the Officers acting in Support of Government Should violate the Constitution. . . ." The whole affair, even on the day of the note and the arrests, seemed to him a sort of second edition of the Kemper attempt—"And Burr only appears the greatest Don quixote of the two—The Mountain has surely brought forth a Mouse."⁷⁵

Then, with perfect inconsistency, when Blennerhassett, Floyd, and Ralston were brought before him on writs of habeas corpus, he (1) freed them on the ground that Toulmin had no jurisdiction in the Natchez District, and (2) had them held on charges of unlawful combination and conspiracy. Ralston, along with Comfort Tyler,

⁷³ Harry Toulmin to Capt. P. P. Schuyler, Washington, M. T., Feb. 7, in *Transactions of the Alabama Historical Society*, 1898-99, III (Tuscaloosa, 1899), 169-170; Graham's testimony at Richmond, Sept. 24, 1807, *American State Papers, Miscellaneous*, I, 531; Blennerhassett to his wife (in Natchez), perhaps Feb. 7, 1807, in Div. of MSS, Library of Congress.

⁷⁴ *Mississippi Messenger*, Feb. 17, 1807, printed in Mississippi Archives, *Third Annual Report*, p. 103.

⁷⁵ Rodney to C. A. Rodney, Feb. 11-12, 1807, *Penna. Mag.*, XLIV (1920), 299-302; and the notebooks below.

THOMAS RODNEY

whom Toulmin had believed innocent, was thrown into jail because he could not raise the \$6,000 bail set by Rodney. The judge forthwith set about binding witnesses and issuing a venire in preparation for a trial in the Supreme Court in June.⁷⁶ Ultimately, as we shall see in another connection, the entire crew were discharged by the other judges on grounds of want of jurisdiction, but Rodney only blew hotter as the year wore on. After Burr's trial in Richmond, he spoke of "... the most Villanous Traitor and treason . . . in any country."⁷⁷

Rodney found in the Mississippi Territory a type of politics that was, in fundamentals, much like that of Delaware in his youth. The alignments were by factions, clans, and families rather than by organized parties with sets of principles. There were few counties and a small ruling class, so that personal relations were important, and petty geographical sectionalism had weight. The vast political dependence of the colony upon the central power in Washington gave to politics an aspect that might have resembled that of the politics of prerevolutionary Delaware under the proprietor.

When Rodney arrived the "Republicans" had triumphed over the "Federalists," but had of course, once in power, split into bitter factions. Rodney assumed an attitude of neutrality, as became a judge and a land commissioner, but he was inevitably driven to take sides. The switch of individuals, frequently on slight personal grounds, is difficult to trace, and it cannot be said with certainty when Rodney became an active partisan.

His fellow commissioner, Robert Williams, a former congressman from North Carolina, was commended to Thomas Jefferson for preferment by Isaac Briggs, in whom Jefferson reposed confidence. He became governor of the territory on May 12, 1805, and two weeks later he and Rodney exchanged a sharp correspondence over Williams's evicting the Supreme Court from Government House to make room for other offices. "I believe," wrote Rodney, "that it is the first instance in America where the Governor has undertaken to dictate to a Court of Law. . . ."⁷⁸ The court moved; but there is no evidence

⁷⁶ Chambers Docket, Feb. 16-March 28, 1807, in Hist. Soc. of Del.

⁷⁷ Rodney to C. A. Rodney, Oct. 18, 1807, *Penna. Mag.*, XLV (1921), 48. In Burr's entourage was a young German named Charles Willie, his secretary. Toward the end of Dec., 1807, a German named John G. Jones at Walnut Hills sent Rodney a young German to be his servant, at ten dollars a month, bound for six months. This man's name was Charles Unwilly or Unwiley, if you care for puns (Rodney's Account Book, Dec. 19, 26, 1807, Jan. 5, June 1, June 13, 1808, in New York Public Library). Things like that do not happen outside of books; the writer draws no conclusion.

⁷⁸ Letters of May 27 and 28, copies in Jefferson Papers, Vol. 150, ff. 26139-26146, Div. of MSS, Library of Congress. The originals of Williams's letters are in

that this started a feud. The feeling of this writer is that Rodney moved politically with a factional chief named George Poindexter, a young man who was attorney general when Rodney came to the territory. Poindexter began to associate with the clique of Cato West and Cowles Mead, to which he had been in opposition, in 1805, and antagonized Williams by leading an attack on Briggs.⁷⁹ By 1807 Poindexter was the head of a growing anti-Williams party,⁸⁰ to which Williams himself by truculent acts was busy adding members. Rodney expressed his fear that the governor was driving all the Republicans from office. In the same letter he claimed he still did not meddle in politics,⁸¹ but the fact is that he was already probably an advisor to the Poindexter high command, in which William B. Shields was chief lieutenant. When Poindexter went off to Congress as delegate in 1807, Shields, as his local deputy, constantly consulted Rodney. Colonel Rodney, wrote Shields, "says in his laconic way, Poin. must succeed."⁸² The word "laconic" is astonishing to one who thinks he has read millions of words set down by the garrulous colonel.

The ultimate outrage to Rodney was Governor Williams's attack on the officers of his courts in 1808 when he attempted to remove the clerks of Adams Circuit and the Supreme Courts. This precipitated an interesting early case bearing on the relations between the executive and the judiciary, whose separation of powers is so sacrosanct in America, and bearing, too, on the still unsettled law of removal from office. This matter, illuminated in the documents that follow, will be fully discussed elsewhere; mention of it is introduced here to show the extent of Rodney's rupture with the governor, who, when the Circuit Court denied the motion to admit his appointee, sent a "protest"

the Hist. Soc. of Penna. It might be of antiquarian interest to quote the following note by Rodney: "In the year 1806 [Supreme] Court sat Nov. 24-Dec 17 in the House where the Assembly now sits [in Washington, 1809] which then belonged to Mr. Reese. Then moved to Towson's [boarding house]. Then Adj'd to 1st Munday in Feby. 1807 and set from the 2nd to 10th of that month. They met the first day [to try to indict Aaron Burr] in Rees's House afsd and the House being in danger of falling from the Great Crowd of people in it the Court moved to House at the Opposite Corner." (Feb. 27, 1809, in Mississippi Archives.)

⁷⁹ Williams to Jefferson, March 14, 1807, *Terr. Papers of the U. S.*, V, 530; William Dunbar to Jefferson, Dec. 17, 1805, Mrs. Dunbar Rowland (ed.), *Life, Letters and Papers of William Dunbar* . . . (Jackson, 1930), p. 186.

⁸⁰ The motives and methods of politics in the territory are explored in William B. Hamilton, "Politics in the Mississippi Territory," *Huntington Library Quarterly*, XI (May, 1948), 277-291.

⁸¹ Rodney to C. A. Rodney, Oct. 18, 1807, *Penna. Mag.*, XLV (1921), 46-49.

⁸² Shields to Poindexter, Dec. 20, 1808, in Louisiana State University Library.

THOMAS RODNEY

to the court, and published in the press what Rodney said was a misrepresentation of the latter's opinion.

Rodney was shrill in his denunciations of Williams. He seems to have welcomed a motion to declare him in contempt of court. "The Conduct of the Govr. Indeed is like That of a Man whose mind is deranged." He accused Williams of nefarious attacks on the militia and the legislature, and of crooked tampering with the mails in the Washington post office.⁸³

The news was finally broken to a delighted citizenry on March 3, 1809, that Williams would be governor no longer. The assembly, with whoops of joy, "determined to have a Frolic." Rodney's eminence in the community quite as much as his association with resistance to the tyrant led the celebrants to include a ceremonial salute to the old judge in their festivities. At nine o'clock in the evening the speaker of the house, Rodney's friend F. L. Claiborne, led a crowd of members of the assembly and about fifty other citizens to Rodney's house. The company, lighted by torches and enlivened by drum and fife, lined up in military order and gave Rodney three cheers.⁸⁴

Indeed, as his years were about counted, Thomas had established a position for himself that forms a remarkable contrast with that of the Dover Rodney in the 1790's. The broken-down, poverty-stricken, neglected, and sensitive old has-been had in a new community developed into a hard working and energetic man of real service to his country, welcome in the homes of the prominent and honored by society. A personage in his own right, he did not even have to trade on the prestige of his son Caesar Augustus, who was from 1807 to 1811 attorney general of the United States. Although he doubtless worked off his myths about the Revolution on those who would listen—he was toasted as Colonel Rodney, hero of '76—he no longer lived in the past. He filled his pages of writing with live business rather than notations of ancient grievances, and the dreams and portents became scarce. This writer remembers but one account of a symbolic dream in his Mississippi papers.

Rodney pretended that part of his motive in going to public social events was his mission of civilizing the West. He said he accepted the presidency of the dancing club in Washington because he felt the dancing assemblies were a good influence.⁸⁵ But he loved young people and they him. His rooms were always full of them and

⁸³ Rodney to Poindexter, Oct. 20, 1808, *Terr. Papers of the U. S.*, V, 654-657.

⁸⁴ Chambers Docket, in *Hist. Soc. of Del.*

⁸⁵ Rodney to C. A. Rodney, Nov. 24, 1805, in Div. of MSS, Library of Congress.

ANGLO-AMERICAN LAW ON THE FRONTIER

when he was ill they flocked about, dancing attendance on the judge. One evening when he was at Natchez for court, some young people sent for him, including his especial intimates Mrs. George Poindexter, Mrs. F. L. Claiborne, and Peggy Dunbar. They made Rodney sell pawns with them, and concluded the evening with music, after which the party insisted on escorting the old gentleman to his lodgings, one of the ladies leading him with a lamp.

He frequently made social circuits among what he called the "nabobs." Before old Anthony Hutchins died, late in 1804, Rodney often stopped in at his estate, White Apple Village, where Hutchins, who had been a Loyalist in the Revolution, told him tales of a turbulent quarter of a century in the Natchez District. Typical was an expedition in May of 1804 in Rodney's capacity as priest. He paused (as always) at Colonel Benijah Osmun's to drink wine and water and at Jessie Greenfield's for the same; stopped for dinner and lodging at William Dunbar's; and thence attended Peggy Dunbar, the current belle of the territory, and Ellen Girault to Captain Jesse Carter's, where Poindexter and Shields had preceded them. They all dined together (usually at two or three o'clock in the afternoon) and took their ease until evening. At early candlelight he united Poindexter and Lydia Carter in marriage. The young people danced till ten o'clock, and then "the Bride and Groom went to bed &c."

Next day he progressed south to the house of Colonel John Ellis, president of the council and later speaker of the house, where he stayed several days, returning home by Abraham Ellis's and Isaac Gaillard's to Hutchins's, to Dunbar's, and back to have clabber with Colonel Osmun.⁸⁶

William Dunbar's company was especially stimulating to Rodney, who was always curious about the natural phenomena around him, and who was forever rushing off to see some new fossil or artifact or to hear the tales of travelers in the great land beyond the river. Dunbar was a scientist of parts. A member of the American Philosophical Society, he contributed fifteen papers to its publications. Jefferson sent him in 1804 to explore the Red and Washita rivers. Rodney's education at his hands, fostered by the loan of books and many conversations, might be typified by "A Planetary feast of Philosophy" they enjoyed together on the night of February 20-21, 1806. Through Dunbar's telescope, a six-foot Gregorian instrument im-

⁸⁶ Notes, in journal form, May 29—, 1804, in Hist. Soc. of Del. A much more detailed account of a swing around the whole southwest corner of the territory in Sept. of the same year is available in print in the *Journal of Mississippi History*, VII (April, 1945), 111-116; so it is not sketched here.

THOMAS RODNEY

ported from London in 1805, they viewed Venus, the moon, and the north star. They arose at 4:30 A.M. to see Saturn and Jupiter, and after breakfast viewed the sun; finding no spots on it, they concluded there would be a hot summer.⁸⁷ Rodney once got "a confounded blow" from the fanning machine over Dunbar's dinner table, and thought a scientist could have better ordered his mechanical contraptions.

The principal cultural institution of the Mississippi Territory was the Mississippi Society for the Acquisition and Dissemination of Useful Knowledge, which was chartered in 1803 and was still having regular meetings in 1814.⁸⁸ Of its proceedings little is known at present. Rodney paid his ten dollars for "entrance money" as a corresponding member of the society in 1806.⁸⁹ Dunbar was of course the leading spirit; other members with whom Rodney is known to have been on visiting terms were Isaac Briggs, John Ellis, Samuel Brooks, John Girault, Jesse Greenfield, Seth Lewis, Shields and Poindexter, Dr. Joseph McCrery, and Abner Green. Dr. John Sibley of Louisiana, with whom Rodney delighted to talk and correspond about the Western country, was a fellow corresponding member.⁹⁰

Of other public gatherings for entertainment or edification, the public dinner was chief. If there were Episcopal or any other type of religious services, the former vestryman mentions them not. There were theatrical performances in Natchez in Rodney's time, put on by an active local group,⁹¹ but the only spectacle he mentions was the "Lyon," a 500-pound beast.⁹² The public dinner was in the territory both a social occasion and a means of expressing opinion through appropriate toasts. Thomas frequently attended. At a dinner for Governor Williams in 1805 and at the customary celebration of Independence Day in 1808 at Washington, he served as president of the

⁸⁷ Note, in Hist. Soc. of Del. On Dunbar see Franklin L. Riley, "Sir William Dunbar—The Pioneer Scientist of Mississippi," in Mississippi Historical Society, *Publications*, II, 83 ff.; Hamilton, "American Beginnings in the Old Southwest" in Duke University Library, pp. 380-387; The American Philosophical Society, *Documents Relating to the Purchase & Exploration of Louisiana* . . . (Boston, 1904); Rowland, *Dunbar*.

⁸⁸ MS Journal House, Nov. 18, 1803, in Mississippi Archives; Toulmin's *Digest*, pp. 409-410 (for bibliographical detail on this reference, see below, p. 137, n. 81); Washington *Republican*, June 29, 1814.

⁸⁹ Feb. 2. Rodney's Account Book, in New York Public Library.

⁹⁰ Membership list in *Mississippi Herald and Natchez Gazette*, Oct. 19, 1804.

⁹¹ William B. Hamilton, "The Theater in the Old Southwest: The First Decade at Natchez," *American Literature*, XII (Jan., 1941), 471-485.

⁹² Jan. 25, 1806. Rodney's Account Book, in New York Public Library.

ANGLO-AMERICAN LAW ON THE FRONTIER

dinner,⁹³ an office of some dignity. He presided also at a dinner held in celebration of Madison's inauguration. The patriotic drinkers toasted the embargo (music: "The Successful Campaign") which was ruining them, and chided the town of Boston for her opposition to the measures of the government ("Yankee Doodle"). After Rodney had retired, Cowles Mead gave the company "Our venerable President Thomas Rodney, a patriot of '76." The evening was concluded with a ball at De France's tavern, where "beauty vied with beauty." After supper "his honor Judge Rodney, who sat at the head of the table, requested the ladies to take a glass of wine with him—his toast, was 'Mrs. Madison' . . ."⁹⁴ The most embarrassing of these affairs to him must have been the dinner on August 13, 1807, in his honor, to signalize his departure for the East to attend Burr's trial. On the day before he had had a "smart fever," but had to fatigue himself nonetheless by chairmaning a public meeting to express indignation at the latest outrages of the British. He was so ill he determined not to leave, but it was too late to call off his dinner.⁹⁵

Although no ascetic in his youth, Rodney, like most revolutionists during certain of their phases, had for a period frowned on merriment and the flesh, and we have seen him refuse to take punch with Washington. It was a measure of the change wrought in him by Mississippi life that he abandoned all puritanism there. One of the complicated arrangements reflected in his account book was the division with his friends of a cask of Madeira wine. Rodney liked to gamble. He usually bought a ticket in any lottery available, and his games in the territory were frequently played for stakes. He played loo or whist with Poindexter, Shields, Thomas Hill Williams, James Caller (a justice of the peace and legislator from the Alabama side), and Montfort Calvit, Sheriff of Adams. Or he lost at backgammon with Cowles Mead and his brother William. The amounts involved were not always so negligible as the thirty-two oranges he lost playing at loo with the ladies at the home of one of the Chews.⁹⁶

The cost of living was high in the West, and Thomas did not save any money; he always thought he would accumulate a little wealth and return to Delaware. He had bought several lots and a small house, in poor condition, in Washington.⁹⁷ He had been given by

⁹³ July 4, 1808. Chambers Docket in Hist. Soc. of Del.

⁹⁴ March 9, 1809. *The Mississippian*, March 16, 1809.

⁹⁵ Rodney to C. A. Rodney, Aug. 13, 1807, *Penna. Mag.*, XLV (1921), 41-42.

⁹⁶ Rodney's Account Book, in New York Public Library.

⁹⁷ This property was acquired from various persons in 1806-1808, and regularized by an indenture (recorded July 19, 1808, Adams County Deeds, Book E, p. 14 in

THOMAS RODNEY

Anthony Glass a pre-emption claim to 370 acres two miles above Walnut Hills (not paid for at his death) and had bought 27 more acres near by.⁹⁸ For some time he drove a chaise his son had shipped to him, and a horse was of course a necessity. From 1805 to 1807 he owned a mulatto, and he had two house slaves at the time of his death, bought probably in his last weeks. Of his handful of books only Blackstone and Ossian's poems and the letters of Junius are worth mentioning, as representing three of his lifelong interests.⁹⁹

In 1810 his little grandson, Caesar, was ill of some kind of kidney trouble, and it was determined to send him around by water to see if the Mississippi climate would work an improvement. The Poindexters brought him, arriving by way of Lakes Pontchartrain and Maurepas in West Florida. The grandfather, unwell himself, rode down in July to meet him. The child did not long survive the trip; he died at Shields's house on August 19.¹⁰⁰

When Nehemiah Tilton arrived in November to be register of the Land Office, he found the old judge quite weak and feeble, but cheerful. Colonel Tilton must have been welcome. The brother of that staunch Whig, Dr. James Tilton, he was a link with Rodney's youth, having been a member of the Dover Light Infantry in the great adventure of 1776.

The judge's health continued to decline; so he and Tilton moved into Rodney's house and set up housekeeping.¹⁰¹ Always a faddist in his remedies, suspicious all his life of doctors, the patient astounded Tilton with his self-treatment. He took white oak bark tea to check his fever, sweet gum balsam for his cough, and orange juice and sugar for the lax.¹⁰² Soups and custards he rejected, sure that whatever his stomach craved was good for him. He drank gallons of cider,

Chancery Clerk's Office, Natchez) from John Foster, the proprietor of Washington. Rodney's Account Book for May, 1806, and Feb. 25, 1807, in New York Public Library.

⁹⁸ Schedule of property for the tax collector, Nov. 26, 1807, in Div. of MSS, Library of Congress.

⁹⁹ Inventory and accounts of W. B. Shields, executor, are in Probate Papers, Box 32, Adams County Chancery Clerk's Office.

¹⁰⁰ Rodney's Journal of trip to the lakes, July 6-17 (incomplete), 1810, in Hist. Soc. of Del. Date of death in Account Book, in New York Public Library.

¹⁰¹ Rodney had boarded in his own house with Shields and his wife for a while in 1808, but most of his life in Mississippi was spent in boarding houses with the other bachelor officials: first Bennett Truly's, then Towson's, Foster's, briefly at Mrs. Buck's, beautiful daughter of Truly, and others.

¹⁰² Rodney to C. A. Rodney, Nov. 20, 1810, *Penna. Mag.*, XLV (1921), 194-197.

ANGLO-AMERICAN LAW ON THE FRONTIER

ate mackerel, pickled oysters, roasted apples, pork and beef, and cabbage.¹⁰³

Rodney was in no pain, and his mind was clear and serene. The people respected him, he felt. "In truth they universally seem to view me as the Patriarch and Father of the Territory."¹⁰⁴ On January 21, an hour after sunrise, he died.¹⁰⁵ "If I Depart in the West," he had once written his son, "I Shall Set like the Sun, in the Evening of My day, On the border of the Western Ocean. There the Union banner will rest, if Florida is not given up"¹⁰⁶

¹⁰³ Nehemiah Tilton to C. A. Rodney, Dec. 30, 1810; Jan. 16, 1811, in Hist. Soc. of Del.

¹⁰⁴ Rodney to C. A. Rodney, Dec. 4, 1810, *Penna. Mag.*, XLV (1921), 197-200.

¹⁰⁵ Tilton to C. A. Rodney, Jan. 23, 1811, in Hist. Soc. of Del. The *Dictionary of American Biography* is in error.

¹⁰⁶ Rodney to C. A. Rodney, Dec. 17, 1806, in Div. of MSS, Library of Congress.

INDEX

- Adams, John, named peace commissioner, 40
- Adams, Sam, Rodney on, 37
- Admiralty cases, in Delaware, 42-44
- Allen, Hugh, member Burr expedition, 79n.
- American Revolution: in Delaware, 8-24, 32; leaders in Delaware, 16; crisis precipitated by Continental Congress, 17; the New Jersey Campaign, 1776-1777, 24-30; regulation of flour trade during, 33-36, 42; peace commissioners selected, 40-41
- Baker, Joshua, j. p. Miss. Terr., 77
- Baning, John: member Kent Committee of Correspondence, 1775, 11; on Whig ticket for assembly, 1775, 13; lost election for convention, 23
- Barrett, Philip: balked of sheriff's post by Rodney, 13; libellant in admiralty cause, 42
- Bassett, Richard: member Kent Committee of Correspondence, 9; supported opponents of independence for Delaware, 19-20; data on, 19-20; won seat in convention, 23-24; in admiralty cases, 42
- Bay, Elihu Hall, land claimant in Natchez District under British grants, 69, 70
- Bayard, James A., defeated for Congress, 61
- Bedford, Gunning, Jr.: 42 and n.; elected to old Congress, 47, 54
- Bedford, Gunning, Sr., elected to old Congress, 49
- Bland, Theodorick, 41
- Blennerhassett, Harmon: residence in the Ohio, 63; arrested as member Burr expedition, 82
- Blount, William, 48
- Boats, description of river, 63
- Bowyer, James, member Kent Common Pleas, 6
- Briggs, Isaac: surveyor of the lands south of Tennessee, 68; recommended Williams to Jefferson, 83; attacked by Poindexter, 84; member Mississippi Society, 87
- Brinckle, John, in case of the "Endeavor," 42-44
- Brooks, Samuel, member Mississippi Society, 87
- Broom, Jacob, 51
- Brown, James, counsel, 70
- Brown, William: in case of the "Endeavor," 42-44; Democratic-Republican nominee for sheriff, 60
- Bruin, Peter Bryan: characterized, 64-74; in Spanish Natchez, 73; judge Miss. Terr., 73, resigned, 74; against holding Burr, 80
- Bullock, Stephen, counsel, 70
- Burke, Thomas, Rodney on, 38
- Burnett, Edmund C., 41
- Burr, Aaron, expedition, arrest and "trial" in Miss. Terr., 78-83
- Butler, Samuel W., member Burr expedition, 79n.
- "Byfield," 51
- Cadwalader, John, in New Jersey campaign, 1776, 26-29
- Caldwell, James, sheriff of Kent, 6
- Caller, James, politician in Tombigbee region, 88
- Calvit, Montford, sheriff of Adams County, 88
- Carmichael, Dr. John, and Burr episode, 78, 82
- Carter, Jesse, planter, 86
- Carter, Lydia, married to Poindexter, 86
- Chew, Benjamin, Loyalist chief justice of Pennsylvania, 45 and n., 54 and n.
- Churches, in Revolutionary politics, 9, 12, 16-17, 18, 19n., 44-45, 48, 56, 58
- Claiborne, Mrs. F. L., 86
- Claiborne, Ferdinand L.: made military arrests in Burr episode, 79; as speaker, leader of anti-Williams celebration, 85
- Claiborne, Major Richard: Rodney's companion on journey to Southwest, 63-64; clerk of Board of Commissioners for land office West of Pearl River, 67
- Claiborne, W. C. C., took possession of Louisiana, 65
- Clark, Daniel, mentioned with Burr episode, 78
- Clarke, John: member Kent Committee of Correspondence, 9; Court party candidate for assembly, 9-10; no Whig, 13, 18; pilloried, 19; won seat in convention, 23; chief justice of Kent, 33
- Cobb, Arthur, border fighter, 77n.
- Cobb, William, border fighter, 77n.
- Collins, Thomas: in assembly election of 1774, 10; of 1775, 13-14; elected to convention, 23-24; president of Delaware, 50
- Commission for lands West of Pearl River, 67-70
- Committee of Correspondence of Delaware, 8; of separate counties, 9, 11

INDEX

- Committee of Inspection and Observation: 11; sat on Tories, 12; debated independence, 18-19; celebrated independence, 23
- Continental Congress, 37-41
- Cook, John: candidate for sheriff of Kent, 10, 13; elected to convention, 23-24
- Cooper, R., Democratic-Republican politician, 60
- Council of Safety (Delaware): 11; minutes preserved by Rodney, 11 and n.
- Courts
 - Delaware: Common Pleas, 6, 43; Levy, 7n.; Admiralty, 42-44; Supreme, 43, 44, 61; Errors and Appeals, 43, 61 and n.
 - Mississippi: land commission, 70; Superior, 71-72; County, 71; Supreme, 71-72 and n.; place of sitting, 83 and n.; equity, 72; Circuit, 72
 - Territorial, nature and jurisdiction with respect to federal courts and cases, 80
- Cowgill, John, condemned by Committee of Inspection, 14-15
- Coxe, Dr. John, described Judge Martin, 75
- Cummins, Dr. John: married to Miss Bruin, 76; sheltered Burr, 81, 82
- Dagworthy, John, 16
- Delaware: drives of politics in, 7 and n., 9, 45, 53-54, 59-60; politics of the American Revolution in, 8-24, 32; independence of, proposed, 18, and voted, 20-21; elections of 1777, 32; Admiralty Court in, 42-44; Rodney's view of post-Revolutionary politics in, 44-46, 47-49; 53-54, 59-61; elections of 1785, 47; of 1787, 49; descent of estates in, 55-56 and n.; vote on intangibles tax in assembly, 59; Democratic-Republican party in, 59-60
- Democratic-Republican party in Delaware: 59-62; in Miss. Terr., 83-84
- Dickinson, John: judge Delaware Court of Errors and Appeals, 42-43; president of Delaware, 46, 54; mentioned for governor, 60
- Donap, Col. C. E. K. von, negotiations with Americans, 26-27
- Dover Light Infantry Company: 15, 18; and Tory uprisings, 20; unpopular, 24; in New Jersey campaign, 1776-1777, 25-30
- Duane, James, Rodney on, 38
- Dunbar, Peggy, 86
- Dunbar, William: Rodney visited, 74, 86; planter-scientist, 86-87
- Ellis, Abraham, 86
- Ellis, John: for strong measures against Burr's men, 82, 86; member Mississippi Society, 87
- "Endeavor," brig in admiralty cause, 42-44
- Equity: dispensed by land commission, 70; jurisdiction in Miss. Terr., 72
- Erwin, John, member Burr expedition, 79n.
- Fisher, Elizabeth: wife of Thomas Rodney, 7; death, 46
- Fisher, John: married Lavinia Rodney, 54; secretary of Delaware, 61
- Fisher, Joshua, 26
- Fisher, Miers, 26, 54
- Fisher, Samuel: 26; foreclosed on Rodney's property, 51
- Fitts, Oliver, attorney general North Carolina, judge in Miss. Terr., 75
- Flour trade and regulation during Revolution, 33-36, 42-43
- Floyd, David, held as member of Burr expedition, 82
- Foster, John, proprietor of Washington, Miss. Terr., 89n.
- Franklin, Benjamin, named peace commissioner, 40
- Gaillard, Isaac, 86
- Gallatin, Albert, and land policy in Southwest, 68
- Gambling, in Miss. Terr., 88
- Gardoqui, Diego de, 34
- Garrett and Wood, merchants of Natchez, 65
- Gates, General Horatio, Rodney's alleged conference with, 39-40
- Georgia: claim and "cession" of Natchez region, 66; Bourbon County, 66
- Girault, Ellen, 86
- Girault, John, member Mississippi Society, 87
- Glass, Anthony, turned over pre-emption claim to Rodney, 88-89
- Graham, John, witness against Burr, 81
- Grand jury, presentments in Burr cause, 81
- Grantham, Isaac, 49
- Great Britain: land grants in Miss. Terr., 66; effect of claims on local politics, 69
- Green, Abner, member Mississippi Society, 87
- Green family in Miss. Terr., 69
- Greenfield, Jessie: 86; member Mississippi Society, 87
- Guion, Major Isaac, knew Martin, 75
- Hall, David, governor of Delaware, 61
- Harding, Lyman: counsel, 70, to Blennerhassett, 82; surety for Burr, 80
- Haslet, John: member of Kent Committee of Correspondence, 9; Whig candidate for assembly, 1774, 9-10; Colonel Kent militia, 11; on ticket for assembly, 1775, 13; 17; 18; killed at Princeton, 29-30

INDEX

- Hayes, Stokly, member Burr expedition, 79n.
- Haymaker, Frederick, member Burr expedition, 79n.
- Henkels, Stan V., sold the Rodney MSS, 3n.
- Henry, Captain George, of Philadelphia militia, 28
- Holker, John, French consul, and flour supply in Revolution, 34, 36
- Holliday, Robert: in Kent assembly election, 1774, 10; Tory and Quaker, 12
- Hunter, Henry, j.p. Miss. Terr., 77
- Huntington, Samuel, president of the U. S. in Congress, 37, 39
- Hutchins, Anthony, 86
- "Ionia Farm," 51
- Jay, John, named peace commissioner, 40
- Jefferson, Thomas: named peace commissioner, 40-41, 55, 57; Rodney cool toward, 60; appointed Rodney judge and land commissioner, 62; appointed Williams governor, 83
- Jones, John, 16, 49
- Jones, John G., 83n.
- Judges, in Miss. Terr., 72-76
- Kemper, Nathan, Reuben, and Samuel, border fighters, kidnapped, 76-78
- Ker, David, judge in Miss. Terr., 72-73
- Killen, William: member Kent Committee of Correspondence, 9; Whig candidate for assembly, 9; member Kent Committee of Correspondence, 11; on ticket for assembly, 1775, 13; defeated for convention, 23-24; chief justice of Delaware Supreme Court, 44; characterized, 46; post-Revolutionary politics, 44, 54, 60
- Kollock, Jacob, member Stamp Act Congress, 8
- Land. *See* Public lands
- Latimer, George: 34; marshal Admiralty Court, 43
- Laurens, Henry, named peace commissioner, 40-41
- Leake, Walter, judge in Miss. Terr., 74-75 and n.
- Lee, Charles: 16; captured, 26; Rodney thought him Junius, 57
- Lee, Richard Henry, resolutions for independence, 21
- Lewis, Meriwether, beginning of his famous journey, 63
- Lewis, Seth, member Mississippi Society, 87
- Loockerman, Vincent, Sr. or Jr.: member Kent Committee of Correspondence, 11; Whig member assembly, 1775, 14; lost race for convention, 23-24
- Luff, Dr., 57
- Luzerne, Caesar de, French minister, 34
- McComb, Eleazar, 50, 53, 54
- McCrery, Dr. Joseph, member Mississippi Society, 87
- McKean, Thomas: member Stamp Act Congress, 8; of Continental Congresses, 9, 37; voted for independence, 21, 24; Rodney on, 38; in ballots for peace commissioners, 40-41; president of U. S. in Congress, 41; patron of C. A. Rodney, 46-47; Democratic-Republican, 60-61; solicited job for Rodney, 62n.
- McKinly, John: Tory president of Delaware, 8; captured, 32
- McLane, Allen: quoted, 18; member Privy Council, 50
- Madison, James, Rodney on, 38
- Manny, Francis, succeeded to Rodney's offices, 50
- Martin, François-Xavier, data on, judge in Miss. and Orleans Terrs., 75
- Mathews, George, judge in Miss. and Orleans Terrs., 73-74
- Mawhood, Lt. Col. Charles, at Princeton, 30
- Mead, Cowles, secretary and acting governor Miss. Terr.: in Burr episode, 78-79; factional leader, 84, 88
- Mead, William, 88
- Mercer, Hugh, killed at Princeton, 29-30
- Mifflin, Warner, 56
- Militia, in Delaware, 10-11
- Miller, Edward, Republican politician, 47, 54
- Miller, John, Whig preacher, 12, 18
- Miller, Joseph, Republican politician, 47, 54, 60
- Mississippi Society for the Acquisition and Dissemination of Useful Knowledge, 87
- Mississippi Territory: geography and economy, 65; relinquished by Spain, 65-66; government, 65-66; public lands and land claims in, 66-70; organization of higher courts in, 71, 72; judges in, 72-76; politics in, 73, 83-85; Kemper affair, 76-78; Aaron Burr in, 78-83; social activities in, 86-88; cultural activities in, 87-88
- Mitchell, Nathaniel: elected to old Congress, 49; federalist nominee for governor, 61
- Money, in Miss. Terr., 76 and n.
- Moore, Jacob, seized by the Dover Light Infantry, 15
- Morris, Robert: and flour regulation in Revolution, 34, 36; Rodney's claim concerning, 41
- Munroe, John A., quoted on Delaware history, 7, 16, 45, 47, 48

INDEX

- Natchez District: economy and population, 65; evacuated by Spain, 65, 66; disputed land claims in, 66-70; courts and judges in, 71-76; relations with Spanish, 76-78; and the Burr expedition, 78-83; politics in, 83-85; social activities in, 86-88
- Negroes: Rodney's views on, 54-55; unrest among, in Delaware, 55; percentage of population in Natchez District, 65
- Ohio River, journey on, 1803, 63-64
- Osmun, Benijah: surety for Burr, 79-80; 86
- Patten, John, a founder of Republican party in Delaware, 47, 49, 60
- Peery, William, elected to old Congress, 47, 49
- Plum, John, member of Burr expedition, 79n.
- Poindexter, George: counsel, 70; military aide in Burr episode, 79, 81; attorney general, refused to indict Burr, 80; factional leader, 84; member Mississippi Society, 87, 88, 89
- Politics, fundamental factors of: in Delaware, 7, 8, 9, 13-14, 17-19, 44-45, 48-49, 53-54, 59-60; in Miss. Terr., 73, 83-85, 87
- Pope, Col. Charles, 33, 42
- "Poplar Grove," 46, 51
- Presbyterians: leaders in Revolution, 9, 16; aligned against Rodney, 44-45, 47, 48; Rodney on politics of, 60
- Princeton, battle of, 29-30
- Pryor, R. L., member Burr expedition, 79n.
- Public dinner, in Natchez District, 87-88
- Public lands: and the Confederation, 48; conflicting claims, 66; U. S. policy in Miss. Terr., 66-70
- Quakers: stirred up Negroes, 55; pro-British in Revolution, 56
- Ralston, Alexander, member Burr expedition, 79n., 80, 82-83
- Ralston, John, 50
- Read, George: 8; delegate to Continental Congress, 9, 21; cited Light Infantry for breach of privilege, 15 and n.; voted against independence, 21; in admiralty case, 42; in Kent elections of 1786, 48; family relationship, 49
- Reed, Joseph, activities in December, 1776, 26-27
- Republican party. *See* Democratic-Republican
- Ridgely, Dr. Charles: chief justice Kent Common Pleas, 6; member Kent Committee of Correspondence, 9; head of party, 9; tried and acquitted for disloyalty to patriot cause, 12-13; member Council of Safety, 12 and n.; elected to convention, 23-24
- Rights of the individual, in territorial courts, 80-82
- Robinson, Thomas, Delaware loyalist: 8, 12; seized by the Dover Light Infantry, 15
- Rodney, Caesar: career and offices, 5, 8, 9; placatory, 10; on both tickets for assembly in 1774, 10; colonel Kent militia, 11; chairman Kent Committee of Inspection, 1775, 11; disapproved of Thomas's politics, 13-14; motives in Revolution, 16; on guidance public opinion, 17; his vote for independence and his ride, 21-22; at Trenton, 31; brigadier general in militia, 1777, 32; president of Delaware, 1778, 32, 33-35; his honesty, 35; death, 46; estate foreclosed, 50-51
- Rodney, Caesar, son of C. A. R., death, 89
- Rodney, Caesar Augustus: birth, 7n.; legate of Caesar, 46-47, 51; his children, 53, 89; marriage, 54; for tax on intangibles, 59; Democratic-Republican, 60-61; elected to Congress, 61, 62; attorney general of U. S., 81, 85
- Rodney, Admiral Sir G. B., British land grant in Natchez District, 69
- Rodney, Lavinia: birth, 7n.; marriage, 54
- Rodney, Thomas: youth, 5, 6; member Kent County Court, 6, 7, 31; marriage, 7; failed at business, 7; in Kent County Committee of Correspondence, 9, chairman, 1775, 11; in Kent County politics, 9-24, 47-49; captain in militia, 10; member Council of Safety, 1776, 11; realigned parties in Kent, 13-14; on Whig ticket for assembly, 1775, 13; perhaps chairman Committee of Inspection, 14; captain Dover Light Infantry, 15; motives in Revolution, 16; for independence, in Committee of Inspection, 19; opposed mob violence, 19; on the Declaration of Independence, 22; lost the elections for constitutional convention in 1776, 23-24; in New Jersey campaign, 1776-1777, 25-31; self-deception and mysticism, 25-28, 35, 36-37, 39-40, 52-55, 59n.; brigade major to Caesar, 32; judge of the Admiralty Court, 32; clothier for Delaware troops, 32-33; register of probate, 33, 46; colonel Delaware militia, 33; in flour business with Rumford, 33-36; member various congresses of the Confederation, 37-41, 47-49; on his fellow members,

INDEX

- 37-38; on finance, 38-39; on election Franklin's peace commissioner, 40-41; as judge of admiralty, 42-44; his reading, 44, 55-56, 57, 62, 64, 89; the "conspiracy" against him, 44-46; favored cession public lands to Confederation, 48; in assembly, 1786-1787, 48, 49-50; elected speaker, 49; removed from offices, 50; bankrupt, 50-51; jailed for debt, 51; various views and writings, 56-58; his religion, 58; president Delaware Agricultural Society, 58; justice Supreme Court of Delaware, 61; appointed judge and land commissioner in Miss. Terr., 62; journey to Natchez, 62-64; as land commissioner in Miss. Terr., 66-71; change of character in Mississippi, 71, 85, 88; as judge in Miss. Terr., 71-83; and the Kemper episode, 76-78; expansionist, 76-77; and the Burr "trial," 78-83; anti-Williams in politics, 84; prestige and social activities in Miss. Terr., 86-90; property, 88-89; last days, 89-90
- Rodney MSS, 3n., 6n., 37n., 64n.
- Rowan, A. Hamilton, 57
- Rumford, Jonathan, in flour trade: 34-36; mobbed, 36
- "St. Patrick," schooner, in Revolutionary trade, 35
- Sargent, Winthrop, Rodney visited, 74
- Sharpe, William, 41
- Shaw, John, political writer, 73
- Shields, William Bayard: admitted to Delaware bar, 62; Rodney's companion on journey to Southwest, 62-64; agent of U. S. before land commission West of Pearl River, 68, 70; married to V. Benoist, 76; military aide to governor in Burr episode, 79, 81; political lieutenant of Poindexter, 84; at latter's wedding, 86; member Mississippi Society, 87, 88; executor of Rodney's estate, 89n.
- Sibley, Dr. John, member Mississippi Society, 87
- Slavery, Rodney's views on, 54
- Smith, Richard, accused of being a Tory, 11, 19n.
- Social customs, in Miss. Terr., 86-90
- Southwest, the old: as a frontier march, 65, 76-78; land policy in, 66-70; courts and judges in, 71-76; Burr expedition, 78-83; social life and customs, 85-90
- Spain: controlled Natchez District, 65, 66; relations Spanish territory with Miss. Terr., 76-78
- Stout, Jacob: member Kent Committee of Correspondence, 9; of Court party, 9-10; patriotism suspect, 13; elected to convention, 23-24
- Sykes, James, 50
- Territories (or colonies) of the U. S., relations of courts to U. S. courts and jurisdiction, 80
- Thorn, Sydenham, Anglican parson cited for disloyalty, 12
- Tilghman, Edward, 45
- Tilton, James: member Kent Committee of Correspondence, 1775, 11; author *Dionysius*, 15 and n., 17, 36; leader of Democratic-Republican party in Delaware, 47, 59-60, 54; against intangibles tax, 59
- Tilton, Nehemiah: deputy for Rodney's clerical jobs, 46; register of land office West of Pearl River, with Rodney in last days, 89-90
- Toulmin, Harry: judge in Miss. Terr., 75, 78; ordered arrest of members of Burr expedition, 82
- Truly, Bennett: boardinghouse keeper, 65
- Turner, Edward: register land office West of Pearl River, 64, 67; forced to resign, 69
- Tyler, Comfort: member Burr expedition, 80; arrested, 82-83
- United States: land policy in Southwest, 66-71; territories or colonies, nature and jurisdiction of their courts, 80
- United States v. Aaron Burr*, 79-81
- Unwilly, Charles, indentured servant, 83n.
- Van Dyke, Nicholas: member Continental Congress, 37; president of Delaware, 46; 49
- Vining, John, and Kent County Loan Office, 50
- Vining, John, II: 46; elected to old Congress, 47 and n.
- W. B., surviving partner v. Latimer*, 42-44
- Washington, George: and New Jersey campaign, 1776-1777, 24-30; meeting with Rodney, 1790, 58-59, 59n.
- Washington District (of Miss. Terr.) Court, 71, 72
- Wells, James, member Kent Committee of Correspondence, 9
- West, Cato, acting governor Miss. Terr., head of faction, 73, 84
- West Florida, relations with Miss. Terr., 76-78
- White, Thomas: against independence, 19; elected to convention, 23-24
- Wilkinson, General James, and Burr expedition, 78
- Williams, Robert: commissioner land office West of Pearl River, 64, 67-68; and Burr expedition, 80, 82; governor Miss. Terr., 83; opposition to him, 84; effort

INDEX

- to remove court clerks, 84; resignation, 85; dinner for, 87
- Williams, Thomas Hill: identified, companion of Rodney on journey to Southwest, 64; register land commission West of Pearl River, 69 and n., 88
- Willie, Charles, member Burr expedition, 83n.
- Wilson, Sally, half-sister of Rodney, 46, 52
- Wilson, Simon W.: inn.; Rodney's kinsman and deputy, 46; shortage as loan officer, 50
- Wilson, Thomas, step-father of Thomas, 5
- Witherspoon, John, Rodney on, 37

GAYLAMOUNT
PAMPHLET BINDER



Manufactured by
GAYLORD BROS. Inc.
Syracuse, N. Y.
Stockton, Calif.

Duke University Libraries



D021444540

D021444540



Duke University Libraries